CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 35 APRIL 11, 2001 NO. 15

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

Please visit the U.S. Customs Web at:
http://www.customs.gov

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

(T.D. 01–19)

REVISED SCHEDULE OF NAVIGATION FEES

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces a revision to the schedule of navigation fees for specific services provided to vessels by Customs officers. The fees authorized to be collected represent reimbursement to the government for costs associated with providing specific services to private parties. The current fee schedule was last revised in 1985 and does not reflect current salary and benefit costs and other appropriate costs and, therefore, does not effectively reimburse Customs for the services it provides vessels. Accordingly, the navigation fees are being revised to recover the full costs of providing services to vessels.

EFFECTIVE DATE: March 14, 2001.

FOR FURTHER INFORMATION CONTACT: April Conti, Cost Management Staff, Office of Finance, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927-2014.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs provides certain services for vessels on a reimbursable basis. The specific services provided are delineated at § 4.98 of the Customs Regulations (19 CFR 4.98). Section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (Pub.L. 95–410, 92 Stat. 888, 19 U.S.C. 58a) authorizes the Secretary of the Treasury to establish the schedule of fees, commonly referred to as "navigation fees", that Customs can charge and collect for these services. The fees are to be consistent with 31 U.S.C. 9701, which provides that the costs of specific services for private interests shall be reimbursed to the Government. The fees are calculated in accordance with the provisions of § 24.17(d) of the Customs Regulations (19 CFR 24.17(d)).

The authority to establish the schedule of navigation fees was delegated by the Secretary of the Treasury to the Commissioner of Customs by Treasury Department Order No. 165, Revised (T.D. 53654).

The current schedule of navigation fees was last revised by T.D. 85–70 to reflect Federal pay increases, administrative overhead charges, and Medicare expenses at that time. Customs has not revised the schedule of navigation fees since that time to effectively recover the costs associated with subsequent increases in the rate of compensation paid to Customs officers performing a given service and other appropriate costs. Customs Office of Finance has recently conducted a review of the fees prescribed at § 4.98 to determine if the current navigation fee schedule recovers the full costs of providing the services specified and found that it does not. Accordingly, it is necessary for Customs to revise the fee schedule as follows:

	Fee No. and description of services	Current Fee	Revised Fee
1.	Entry of vessel, including American from a foreign port or from another U.S. port when transporting unentered foreign merchandise:		
	(a) Less than 100 net tons.	$ 9.00	$ 19.00
	(b) 100 net tons and over.	$ 18.00	$ 37.00
2.	Clearance of vessel, including American to a foreign port or to another U.S. port when transporting unentered foreign merchandise:		
	(a) Less than 100 net tons.	$ 9.00	$ 19.00
	(b) 100 net tons and over.	$ 18.00	$ 37.00
3.	Issuing permit to foreign vessel to proceed from port to port, and receiving manifest.	$ 18.00	$ 37.00
4.	Receiving manifest of foreign vessel on arrival from another port, and granting a permit to unlade.	$ 18.00	$ 37.00
5.	Receiving post entry.	$ 9.00	$ 19.00
6.	Certifying payment of tonnage tax for foreign vessels only.	$ 4.50	$ 9.00
7.	Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.	$ 18.00	$ 37.00

The fee schedule set forth in this document becomes effective 30 days after its publication in the **Federal Register** and will remain in effect until further revised.

Dated: February 7, 2001.

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

[Published in the **Federal Register**, February 12, 2001 (66 FR 9893)]

19 CFR Part 24

(T.D. 01–25)

RIN 1515–AC82

AMENDED PROCEDURE FOR REFUNDS OF HARBOR MAINTENANCE FEES PAID ON EXPORTS OF MERCHANDISE

AGENCY: Customs Service, Department of the Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations to provide a new procedure for requesting refunds of export harbor maintenance fees collected by Customs since 1987. The United States Supreme Court held these fees to be unconstitutional in 1998. Customs has received numerous requests for refunds from exporters who paid these export fees. The new procedure will simplify the refund process by relieving exporters from documentary requirements in most cases. This amendment is being made on an interim basis in order to expedite the process for exporters entitled to refunds of fees held unconstitutional and no longer required under the Customs Regulations.

DATES: The interim regulation is effective on April 27, 2001. Written comments must be received on or before April 27, 2001.

ADDRESS: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Ave., N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Accounts Receivable Branch, Accounting Services Division, (317) 298-1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Harbor Maintenance Fee (HMF) was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Imposition of the HMF is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. Pursuant to the Act and as implemented by the regulations, the HMF became effective on April 1, 1987.

The HMF has been assessed on port use associated with imports, exports, foreign trade zone admissions, passengers, and movements

of cargo between domestic ports. Currently, the fee is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation. In 1998, the U.S. Supreme Court held the fee unconstitutional as applied to exports (*United States Shoe Corporation v. United States*, 118 S. Ct. 1290, No. 97–372 (March 31, 1998)). Subsequently, by a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that, as of April 25, 1998, the HMF for cargo loaded on board a vessel for export will no longer be collected. On July 31, 1998, Customs published in the **Federal Register** (63 FR 40822) an amendment to § 24.24 of the Customs Regulations, removing the requirement that exporters loading cargo at ports subject to the HMF are liable for payment of the fee. Thus, currently, application of the HMF continues but only for imports, domestic shipments, foreign trade zone admissions, and passengers.

On August 28, 1998, the U.S. Court of International Trade (CIT) ordered an immediate refund of undisputed export fee payments to exporters who had filed complaints with the court seeking recovery of these payments (*United States Shoe Corp. v. United States*, No. 94–11–00668, Slip Op. 98–126 (C.I.T. Aug. 28, 1998)). The order applied to payments received by Customs within two years of an exporter's filing of a complaint with the court. The order required these exporters to file a claim with Customs (attaching a copy of the filed complaint) and required that Customs would: (1) conduct an initial search of its database for all export fee payments subject to refund (made during the prescribed two-year period) that were received from the exporter; (2) notify the exporter of that amount; and (3) unless disputed by the exporter, submit a stipulated judgment to the court for the court to enter judgment and order Customs to issue refunds to the exporter in the determined amount. Again, this court-ordered procedure applied only to exporters who filed a complaint with the court. Accordingly, Customs issued refunds only to exporters who received judgments from the court. All refund claims made under the court-ordered procedure have been processed.

Subsequently, on February 28, 2000, the U.S. Court of Appeals for the Federal Circuit, noting that the Customs Regulations do not impose a time limit on requests for refunds of the HMF (*see* current 19 CFR 24.24(e)(4)), held that there is no limitation on the period within which a refund request may be filed pursuant to Customs Regulations (*Swisher International, Inc. v. United States*, 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000), cert. denied). This ruling allowed exporters who received refunds under the procedure imposed by the court to file administrative requests (processed according to the Customs Regulations without filing a complaint in the court) for additional export fee refunds going back to July of 1987. Those exporters who never filed a complaint under the court procedure were also free to file administratively for export fee refunds.

Current Administrative Procedure for Refund of Export Harbor Maintenance Fees

The administrative procedure for requesting refunds of export fee (and other HMF) payments is provided for under § 24.24(e)(4) of the Customs Regulations (19 CFR 24.24(e)(4)). Under the regulation, exporters are required to file with Customs a request for a refund on a Harbor Maintenance Fee Amended Quarterly Summary Report (Customs Form (CF) 350), accompanied by copies of any relevant Harbor Maintenance Fee Quarterly Summary Reports (CF 349) representing proof of payment of the export fee. Prior to May of 1991, when the Customs Regulations were amended to require submission of the CF 349 with payment of the fee, the regulations required submission of an Export Vessel Movement Summary Sheet (EVM Summary Sheet) or, where Automated Summary Monthly Shipper's Export Declarations were filed, a letter (SED letter) containing the exporter's identity, its employer identification number (EIN), the applicable Census Bureau reporting symbol, and the quarter for which the payment was being made. Many exporters, not having copies of these payment forms, have filed requests for documentation under the Freedom of Information Act (FOIA). Most of these FOIA requests have not yet been processed by Customs, as the volume of requests has had the effect of straining resources.

Amended Administrative Procedure for Refund of Export Harbor Maintenance Fees

To proceed with the issuance of export fee refunds, and to simplify the process and improve its effectiveness, this document amends the Customs Regulations to provide a new procedure for exporters requesting a refund of export fees.

The procedure set forth in the amended regulation is designed to allow a refund request without submission of documentary proof of payment in most cases. Because Customs possesses copies of original payment forms (CF 349s, EVM Summary Sheets, or SED letters) from July 1, 1990, through the date collection of the export fee ceased in 1998, submission of supporting documentation will not be required to obtain refunds of export fee payments made on or after July 1, 1990. However, Customs does not possess these documents for export fee payments made prior to that date. Accordingly, for refund requests relating to export fee payments made prior to July 1, 1990, the exporter must submit proof of payment with the letter of request, that is, relevant copies of EVM Summary Sheets or SED letters provided for under the then current regulations.

In making this amendment to the regulations, Customs recommends that exporters who have filed FOIA requests for copies of payment forms withdraw those requests. In most cases, payment forms sought through a FOIA request seeking documents pertaining to payments made on or after July 1, 1990, are not necessary to obtain a refund. In addition, because Customs does not possess payment forms

relating to export fees paid prior to July 1, 1990, a FOIA request relative to payments made during this period would be fruitless. If the FOIA requests are withdrawn, Customs will be able to more effectively expend its time and resources on the refunding of export fees owed rather than on the processing of numerous FOIA requests. For the same reasons, Customs recommends that exporters seeking a refund of export harbor maintenance fees who have not filed FOIA requests refrain from doing so.

On December 15, 2000, Customs published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (65 FR 78430) that proposed, in the future, in the interest of administrative efficiency, that persons requesting refunds of harbor maintenance fees paid on a quarterly schedule have one year from the date of payment to file for refunds. This would apply to quarterly payments relating to domestic shipments, imported merchandise admitted into a foreign trade zone, passengers, and, though no longer collected, quarterly payments made on export fees. The one-year time limitation was proposed to commence on the date the quarterly fee was paid to Customs, except for fees paid on the unloading of imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone for any purpose specified in 19 U.S.C. 1309. For these latter fees, the one-year time limitation was proposed to commence on the date merchandise was withdrawn from the foreign trade zone. If this amendment proposing a time limitation on filing refund requests is adopted as a final rule, refund requests for export fee payments (and for any other quarterly harbor maintenance fee payment older than one year) will be required to be received on or before the effective date of that final rule document, which will be 30 days from the date of its publication in the **Federal Register**.

Already-filed export fee refund requests. An exporter who has already filed a request for a refund of export fees need not file again. Customs will treat the already filed request as one made under the amended procedure set forth in this document. Customs will process these requests in the order received, so that these filers will not be disadvantaged.

Requesting and processing refunds under the amended regulation. The procedure for exporters requesting and Customs processing export fee refunds as set forth in the amended regulation includes the following steps and features:

1. The exporter requests a refund by filing a letter with Customs requesting a refund of export fee payments collected from that exporter (or collected from a freight forwarder or other agent who paid the fee on the exporter's behalf) by Customs. For payments made prior to July 1, 1990, the letter must identify specific payments claimed and be accompanied by supporting documentation for each payment (a copy of the then required EVM Summary Sheet or its alternative document, an SED letter). For payments made on or after July 1, 1990, the letter must specify the quarters for which a refund is sought

and include the following information: the exporter's name, address, and EIN; if payments of the fee were made by a freight forwarder or other agent on the exporter's behalf, the name and EIN of the freight forwarder or other agent; and the name, telephone number, and facsimile number of a contact person to answer questions. Supporting documentation need not be submitted for payments made during this period.

2. If the NPRM of December 15, 2000, is adopted as a final rule, the request for export fee refunds must be received by Customs by the effective date of that final rule document, 30 days after the date of its publication in the **Federal Register**. Requests for refunds filed after that date relative to quarterly harbor maintenance fee payments that are more than a year old will be rejected as untimely.

3. Upon receipt of a timely filed letter of request for a refund, Customs, for payments made prior to July 1, 1990, will evaluate the documentation submitted and issue a refund if warranted. If the request lacks documentation or the documentation is insufficient, the request will be rejected, in which case the exporter will be given an additional 120 days to submit documentation/additional documentation for Customs consideration and final decision. (For purposes of filing a protest under 19 U.S.C. 1514 (within 90 days of a covered Customs decision), Customs initial decision will be final for exporters not filing documentation during the 120-day period.)

4. For payments made on or after July 1, 1990, Customs will perform a search of its records to locate export fee payment information relative to the exporter filing the refund request (and any freight forwarder or other agent named by the exporter as having made payments on the exporter's behalf) and the quarters identified in the letter of request. Customs will then issue a report to the exporter or its agent containing the results of the search. The report is entitled the "Harbor Maintenance Tax Payment Report and Certification" (the Report/Certification).

5. If the exporter agrees with the payment information in the Report/Certification, the exporter must sign the Report/Certification and return it to Customs with a letter providing an address for receipt of the refund. The Report/Certification must be signed by an officer of the company duly authorized to bind the company, or an agent (such as a broker or freight forwarder) authorized to sign a document of this kind under a properly executed power of attorney or a letter signed by the exporter. Upon receipt of the signed Report/Certification, Customs will issue the refund. If the exporter disagrees with any payment listed on the Report/Certification, or with the omission from the list of a payment it believes was made, the exporter must submit supplementary documentation (a copy of a relevant CF 349, EVM Summary Sheet, or SED letter) as proof of payment. Customs will conduct a second review and notify the exporter (or its agent) of the results. Depending on the results of the review, Customs will either confirm the disputed payment and issue a revised Report/Cer-

tification or notify the exporter that the disputed payment cannot be confirmed. In the latter instance, the Report/Certification will not be revised. To obtain the refund, the exporter must sign and return the (initial or revised) Report/Certification to Customs for its issuance of the refund.

6. The exporter's signature on the Report/Certification (or revised Report/Certification) signifies the exporter's concurrence with Customs determination of the full amount owed and constitutes the exporter's agreement that payment by Customs of the determined amount is in full accord and satisfaction of export fee claims against the Government. By its certification, the exporter will also release, waive, and abandon all claims against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of all HMF export payments other than any payments Customs has already processed under the court-ordered procedure (for which release, etc., were already agreed to).

7. Upon receipt of a signed Report/Certification, the Government releases, waives, and abandons all claims other than fraud that it may have against the exporter or its officers, agents, or employees arising out of all HMF export payments other than those already processed under the court-ordered procedure (for which release, etc., were already agreed to).

8. As litigation concerning payment of interest on refunds continues, the exporter's claim to interest is not released, waived, or abandoned. However, as of the date of publication of this document, interest is not applicable to these refunds.

Customs emphasizes that the procedure for refunds set forth in § 24.24(e)(4)(ii) of the amended regulation applies only to payments of export fees that were held unconstitutional by the U.S. Supreme Court. The procedure for refund requests for any other harbor maintenance fees remains unchanged and is provided for in § 24.24(e)(4)(i) of the amended regulation.

COMMENTS

Before adopting the interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs including comments on the clarity of the interim regulation and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Inapplicability of Notice and Delayed Effective Date Provisions

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that notice and public procedures for this regulation are unnecessary. The regulatory change in this document relieves certain exporters filing for refunds of export harbor maintenance fees from the restriction of having to file documentation representing proof of payment before receiving a refund. For the same reason, pursuant to 5 U.S.C. 553(d)(1) and (3), Customs is dispensing with a delayed effective date. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in the interim regulation has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515-0158. Additional information requested in the interim regulation relates to usual and customary business information/records. This rule does not propose any substantive changes to the existing approved information collection.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

Amendments to The Regulations

For the reasons stated in the preamble, Part 24 of the Customs Regulations (19 CFR Parts 24) is amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising paragraph (e)(4) to read as follows:

§ 24.24 Harbor Maintenance Fee.

* * * * *

(e) *Collections–* * * *

(4) *Refund and supplemental payment.* (i) *For fees paid on other than export movements.* If a refund is requested or a supplemental payment is made relative to quarterly fee payments previously made regarding the loading or unloading of domestic cargo, the unloading of cargo destined for admission into a foreign trade zone, or the boarding or disembarking of passengers, the refund request or supplemental payment must be accompanied by a Harbor Maintenance Fee Amended Quarterly Summary Report, Customs Form 350, along with a copy of the Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the refund requested or the supplemental payment being made. A supplemental payment should be mailed to: U.S. Customs Service, P.O. Box 70915, Chicago, Illinois 60673-0915. A refund request should be mailed to: U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN 26278. A request for a refund must specify the grounds for the refund. Refunds of fees regarding the unloading of imported cargo (except that admitted into a foreign trade zone) must be sought in accordance with the procedure for seeking a refund of ordinary duties.

(ii) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) For export fee payments made prior to July 1, 1990, the exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund to the U.S. Customs Service, HMT Refunds, 6026 Lakeside Blvd., Indianapolis, IN 26278, specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by proof of payment then required under the regulations relative to each payment claimed, a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting

symbol, and the quarter for which the payment was made. Upon receiving a letter of request for a refund, Customs will evaluate the supporting documentation submitted and issue the refund to the exporter or its agent if warranted. Interest is not applicable to these refunds. If the request lacks documentation or the documentation submitted is insufficient, the exporter's refund request will be denied, in which case the exporter will have an additional 120 days to submit documentation or additional documentation. If the documentation submitted is insufficient, Customs will deny the request.

(B) For export fee payments made on or after July 1, 1990, the exporter or its agent must submit a letter of request for a refund (to the address set forth in paragraph (e)(4)(ii)(A) of this section) specifying the grounds for the refund, identifying the quarters for which a refund is sought, and containing the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person. If a refund request is filed by a freight forwarder or other agent on the exporter's behalf, the request must include a properly executed power of attorney and/or a letter signed by the exporter authorizing the representation. Refund requests for payments made on or after July 1, 1990, need not be accompanied by supporting documentation. Upon receipt of the letter of request, Customs will search its records for export fee payments made by or on behalf of the requesting exporter during the quarters identified in the letter of request. Customs will then mail to the exporter or its agent a "Harbor Maintenance Fee Payment Report and Certification" (Report/Certification) containing the results of the search and a statement of the amount of refunds owed to the exporter, if any. If the exporter agrees with the information in the Report/Certification, the exporter must sign the Report/Certification and submit it to Customs with a letter containing an address for mailing the refund. The Report/Certification must be signed by an officer of the company duly authorized to bind the company, or an agent (such as a broker or freight forwarder) authorized to sign the document under a properly executed power of attorney or a letter signed by an authorized officer of the company. Upon receipt of the signed Report/Certification, Customs will issue the refund. If the exporter disagrees with the information in the Report/Certification, the exporter must submit a letter explaining its claim along with proof of payment, either a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter(s) covering the refund requested or, if applicable, a copy of an Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and the quarter for which the payment was made. Upon receiving the letter and docu-

mentation, Customs will conduct a second review and will either confirm the exporter's claim and mail a revised Report/Certification to the exporter or its agent, or notify the exporter or its agent that confirmation cannot be made. In the latter instance, the Report/Certification will not be revised. Upon receipt of a properly signed Report/Certification (initial or revised), Customs will issue the refund. Interest is not applicable to these refunds. The signed Report/Certification received by Customs constitutes the exporter's agreement that Customs payment of the refund amount determined to be owed in the Report/Certification is in full accord and satisfaction of all export fee refund claims. The signed Report/Certification also represents the exporter's release, waiver, and abandonment of all claims against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages. Upon receipt of the signed Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all export fee payments.

* * * * *

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: March 6, 2001.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the **Federal Register**, March 28, 2001 (66 FR 16854)]

---

19 CFR Parts 12, 113 and 141

(T.D. 01–26)

RIN 1515–AC45

ASSESSMENT OF LIQUIDATED DAMAGES REGARDING IMPORTED MERCHANDISE THAT IS NOT ADMISSIBLE UNDER THE FOOD, DRUG AND COSMETIC ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations intended to discourage the illegal sale of imported food. This amendment provides for the assessment of liquidated damages equal to the domestic value of the merchandise in the case of merchandise that is not admissible under the provisions of the Food, Drug and Cosmetic Act and that is not treated or otherwise disposed of in accordance with that Act. The document also adopts, without change, proposed amendments to various provisions of the Customs Regulations pertaining to customs bonds to provide, as a general rule when a different amount is not prescribed by law or regulation, for liquidated damages of three times the appraised value of the merchandise in the case of merchandise that is prohibited from entry. Finally, the document adopts a proposed editorial correction within one of the sections of the Customs Regulations pertaining to customs bonds. The substantive changes reflected in this final rule document will enhance the effectiveness of the affected regulatory provisions by increasing and clarifying the potential liability for the payment of liquidated damages by principals and sureties on customs bonds.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202-927-2344).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381), and the regulations promulgated under that statute, provide the basic legal framework governing the importation of foodstuffs into the United States. Under 21 U.S.C. 381(a), the Secretary of Health and Human Services is authorized to refuse admission of, among other things, any article that is adulterated or misbranded or that has been manufactured, processed or packed under insanitary conditions. The Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of that article to the owner or consignee upon the execution of a good and sufficient bond providing for the payment of liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes, under such bonding and other require-

ments as the Secretary of the Treasury may prescribe by regulation.

Based upon the above statutory authority, imported foodstuffs are conditionally released under bond while determinations as to admissibility are made; *see* § 12.3 of the Customs Regulations (19 CFR 12.3). Under § 141.113(c) of the Customs Regulations (19 CFR 141.113(c)), Customs may demand the return to Customs custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure). The condition of the basic importation and entry bond contained in § 113.62(d) of the Customs Regulations (19 CFR 113.62(d)) sets forth the obligation of the importer of record to timely redeliver released merchandise to Customs on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Failure to meet the obligation to redeliver contained in § 113.62(d) will create a potential liability for the payment of liquidated damages under the terms of the bond.

Proposed regulatory change regarding use of the domestic value standard for liquidated damages

In an April 1998 report to the Chairman of the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, on the subject of food safety, the United States General Accounting Office (GAO) determined that federal efforts to ensure the safety of imported foods were inconsistent and unreliable. Among its specific conclusions, the GAO report indicated that a weakness existed in the customs bond structure in that liquidated damages arising from breach of obligations to redeliver merchandise for which admission was refused did not represent a deterrent to the importation of unsafe products. The GAO reported that liquidated damages of three times the entered value (the existing standard) may not discourage the illegal sale of imported food because the value of the food on the domestic retail market ("domestic value") may be far greater than three times the entered value.

In response to this study, Customs on August 2, 1999, published a notice of proposed rulemaking in the **Federal Register** (64 FR 41851) to amend § 12.3 of the Customs Regulations (19 CFR 12.3) by designating the existing text as paragraph (a) and adding a new paragraph (b) that referred specifically to the assessment of liquidated damages with regard to any food, drug, device or cosmetic that is not redelivered into Customs custody or otherwise treated or disposed of within the time period prescribed by law after the merchandise has been found to be inadmissible pursuant to the provisions of the Food, Drug and Cosmetic Act. This proposed new paragraph (b) provided for the assessment of liquidated damages in an amount equal to the "domestic value" of the merchandise at the time of entry as if it had not been refused admission or otherwise found to be noncompliant. For purposes of calculating the liquidated damages, the new paragraph (b)

text specifically referred to § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)) which defines "domestic value" as "the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade."

Customs also notes that a Presidential memorandum dated July 3, 1999, directed the Secretaries of the Treasury and Health and Human Services to undertake a comprehensive plan to better protect the American consumer from unsafe imported foods. One of the recommended actions involved increasing the amount of the bond posted for imported foods when necessary to deter premature and illegal entry into the United States. Although the preamble portion of the August 2, 1999, notice of proposed rulemaking did not specifically discuss this recommendation, the stated reason behind the proposed new paragraph (b) text of § 12.3 was entirely consistent with that recommendation.

Proposed regulatory change regarding use of the "three times" value standard for prohibited merchandise

The conditions of the basic importation and entry bond set forth in § 113.62 of the Customs Regulations (19 CFR 113.62), the conditions of the basic custodial bond set forth in § 113.63 of the Customs Regulations (19 CFR 113.63), the conditions of the international carrier bond set forth in § 113.64 of the Customs Regulations (19 CFR 113.64), the conditions of the commercial gauger and commercial laboratory bond as set forth in § 113.67 of the Customs Regulations (19 CFR 113.67), and the conditions of the foreign trade zone operator bond as set forth in § 113.73 of the Customs Regulations (19 CFR 113.73) prescribe, as a consequence of default, the assessment of liquidated damages equal to three times the appraised value of the merchandise involved in the default if that merchandise is "restricted merchandise or alcoholic beverages." Similar language is also used in § 141.113(h) of the Customs Regulations (19 CFR 141.113(h)), which recites the liquidated damages that may be assessed for failure to comply with a demand for return of merchandise to Customs custody.

A question had arisen whether the "three times" standard for liquidated damages would be appropriate when the merchandise involved in the default is prohibited from entry. While it remained Customs position that the regulatory provisions referred to above permitted the assessment of three times the appraised value of the merchandise when the merchandise involved in the default was prohibited, the August 2, 1999, notice of proposed rulemaking proposed to amend each of those regulatory provisions to provide explicitly for the assessment of three times the appraised value of the merchandise when the merchandise involved is restricted "or prohibited."

Proposed editorial correction

Finally, the August 2, 1999, notice of proposed rulemaking included

a proposed editorial correction to the first sentence of § 113.62(l)(1), (19 CFR 113.62(l)(1)), which sets forth the consequences of default. This correction involved the addition of a reference to condition "(k)" of § 113.62 in the exceptions to the general rules regarding the amount of liquidated damages that may be assessed (that is, the value of, or three times the value of, the merchandise involved in the default), because a different level of liquidated damages (that is, $100 per thousand board feet of the imported lumber) is prescribed for condition (k) in paragraph (l)(5) of that section.

The notice of proposed rulemaking invited the submission of public comments on the proposed amendments, and the public comment period closed on October 1, 1999. A total of 13 commenters responded to the solicitation of comments. A discussion of those comments follows.

Discussion of Comments

Comment:

One commenter suggested that proposed paragraph (b) of § 12.3 should be incorporated into the bond cancellation standards that were published in T. D. 94–38. The commenter also suggested that the conditional release language of the bond should be eliminated inasmuch as it does not comport with commercial reality.

Customs Response:

Customs does not believe that the suggestions of this commenter should be adopted. Elimination of the conditional release period falls outside the scope of this rulemaking action. Additionally, the bond cancellation standards to which the commenter referred do not govern liquidated damages assessment. Liquidated damages amounts are included in bond terms and conditions which are prescribed in Part 113 of the Customs Regulations.

Comment:

Numerous commenters indicated that assessment of liquidated damages in an amount equal to the domestic value of merchandise refused admission might actually serve to reduce the amount of liquidated damages assessed. One of these commenters indicated that Customs has historically calculated domestic value of merchandise to be two times the entered value plus the duty. As such, the proposed regulation will actually reduce liquidated damages amounts. Such an anomalous result would serve to undermine the purpose of the proposed regulation. Another commenter suggested that, to correct this problem, Customs should reword the regulation to provide for the assessment of liquidated damages of up to three times the value or the domestic value of the refused product, whichever is greater.

Customs Response:

Customs agrees with the commenters that the proposed language

might actually serve to reduce liquidated damages, clearly contrary to the intent of the GAO and the Presidential memorandum of July 3, 1999, as discussed above. Accordingly, in this final rule document a new paragraph (b) has been added to the revised § 12.3 text and proposed paragraph (b) has been modified and redesignated as paragraph (c) in order to provide for a bond, and thus the assessment of liquidated damages, either in an amount equal to the domestic value of the merchandise or in an amount equal to three times the (appraised) value of the merchandise.

Comment:

One commenter was of the view that Customs has mistakenly considered merchandise that has been refused admission by the Food and Drug Administration (FDA) to be considered "prohibited or restricted merchandise" for purposes of liquidated damages assessment. The commenter would like to see the rule clarified to indicate that restricted or prohibited merchandise does not refer to merchandise refused admission by the FDA.

Customs Response:

Customs disagrees with the commenter. By definition, merchandise that has been refused admission by the FDA is prohibited merchandise and should be treated as such.

Comment:

Several commenters stated that proposed paragraph (b) of § 12.3 substantially increases liquidated damages assessments without providing sureties sufficient information to determine the amount of their increased exposure. As a consequence, all importers likely will be charged increased amounts for bonds. Numerous other commenters claimed that the proposed regulation was an undue burden on trade, and they also concluded that increased charges to importers will unnecessarily result because of the proposed change. These commenters stated that the majority of compliant importers will be forced to subsidize the costs incurred because of a very few recalcitrant importers. One of the commenters additionally noted that the GAO report adopted the position that bonds were inadequate as a result of anecdotal evidence that certain foods were resold at prices up to 15 times their entered value. The commenter argued that this anomalous situation should not be the basis for raised potential liquidated damages for all.

Customs Response:

Customs acknowledges that the majority of importers of FDA-regulated merchandise comply with the laws governing the importation of food, drugs and cosmetics. In recognition of that fact and in response to the concerns raised by the commenters with regard to the incurring of risk and with regard to the potential economic impact of the

regulation on compliant importers as proposed, the text of new paragraph (b) of § 12.3 as mentioned above gives the port director a choice as regards the bond amount to be prescribed (that is, an amount based on either the domestic value standard or the three-times-the-value standard), with the choice to be made according to the circumstances of the individual case. The bond amount thus would be importer-specific rather than being standard for all importers of FDA-regulated products. Sureties would then be in a better position to evaluate their risk and Customs would be better able to adjust the bond amount for those importers whose track records would require a higher bond.

Comment:

Some commenters suggested that liquidated damages at the proposed domestic value amount are deterrents designed to punish violators, not to recompense the government for loss. They stated that section 1592 penalties are noted as being the appropriate vehicle to punish an importer who would attempt the importation of refused merchandise.

Customs Response:

Customs disagrees with the commenters that assessment and collection of the liquidated damages claim amount of domestic value is punitive. When articles that have been refused admission by the FDA are not redelivered to Customs, but are distributed into commerce, the exact amount of damages incurred by the public is difficult to quantify. Customs takes the view that the domestic value standard of liquidated damages is reasonable under the circumstances. It is well settled that liquidated damages are not penalties if they are reasonable and the exact amount of the damages sustained would be difficult to prove. *See, U.S. v. Imperial Food Imports*, 834 F.2d 1013 (Fed. Cir. 1987); *Fraser v. United States*, 261 F.2d 282 (9th Cir. 1958); *Ely v. Wickham*, 158 F.2d 233 (10th Cir. 1946).

Comment:

Numerous commenters objected to the use of "domestic value" as a method of determining an adequate bond amount. They claimed that this term is imprecise. They were of the view that the three-times-entered-value liquidated damages amount is clear and that reference to domestic value only confuses the issue.

Customs Response:

Customs notes that the term "domestic value" is currently defined in, and has been successfully administered under, the Customs Regulations. Customs also believes that any objection to the domestic value standard will be mitigated by the fact that the regulatory texts adopted in this final rule document will not require all importers to post bonds

based on a higher domestic value standard. Rather, as indicated above, it is anticipated that a higher bonding level will only be required of those importers who have a history of failing to redeliver or export, destroy or otherwise dispose of inadmissible imported food, drugs and cosmetics.

Comment:

Numerous commenters claimed that the raising of liquidated damages amounts does not serve to stop unsafe products from entering the commerce. These commenters suggested that release of the products be withheld or that immediate delivery privileges be withdrawn.

Customs Response:

The assertion of these commenters regarding the effectiveness of raising liquidated damages amounts appears to be at variance with the conclusions reached by the GAO as discussed above. Other remedies such as those suggested by these commenters fall outside the scope of this document.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes as discussed above and as set forth below. Finally a number of additional minor, editorial-type changes have been made to the regulatory texts set forth in this final rule document. These changes principally involve the replacement of legalistic wording with simple or more direct phraseology, consistent with prevailing plain English drafting principles and without any substantive change.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. The regulatory amendments will not require any additional action on the part of the public, will affect only a small number of importers, and are intended to facilitate Customs enforcement efforts involving existing import requirements. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohib-

ited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

AMENDMENT TO THE REGULATIONS

For the reasons stated in the preamble, Parts 12, 113 and 141, Customs Regulations (19 CFR Parts 12, 113 and 141), are amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read, and the specific authority citation for § 12.3 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS), 1624.

* * * * *

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

* * * * *

2. Section 12.3 is revised to read as follows:

§ 12.3 Release under bond; liquidated damages.

(a) *Release.* No food, drug, device, cosmetic, pesticide, hazardous substance or dangerous caustic or corrosive substance that is the subject of § 12.1 will be released except in accordance with the laws and regulations applicable to the merchandise. When any merchandise that is the subject of § 12.1 is to be released under bond pursuant to regulations applicable to that merchandise, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, will be required.

(b) *Bond amount.* The bond referred to in paragraph (a) of this section must be in a specific amount prescribed by the port director based on the circumstances of the particular case that is either:

(1) Equal to the domestic value (*see* § 162.43(a) of this chapter) of the merchandise at the time of release as if the merchandise were admissible and otherwise in compliance; or

(2) Equal to three times the value of the merchandise as provided in §' 113.62(l)(1) of this chapter.

(c) *Liquidated damages.* Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to § 12.1(a) for

failure to redeliver merchandise into Customs custody or for failure to rectify any noncompliance with the applicable provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug and Cosmetic Act, those liquidated damages will be assessed pursuant to § 113.62(l)(1) of this chapter in the amount of the bond prescribed under paragraph (b) of this section.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. In § 113.62, paragraph (l)(1) is amended by removing the words "conditions (a), (g), or (i)" and adding, in their place, the words "conditions in paragraphs (a), (g), (i), or (k)" and by adding the words "or prohibited" after the word "restricted".

3. In § 113.63, paragraph (h)(1) is amended by adding the words "or prohibited" after the word "restricted".

4. In § 113.64, the second sentence of paragraph (b) is amended by adding the words "or prohibited" after the word "restricted".

5. In § 113.67, paragraphs (a)(2)(i) and (b)(2)(i) are amended by adding the words "or prohibited" after the word "restricted".

6. In § 113.73, the second sentence of paragraph (a)(2) is amended by adding the words "or prohibited" after the word "restricted".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

2. In § 141.113, the first sentence of paragraph (h) is amended by adding the words "or prohibited" after the word "restricted".

RAYMOND W. KELLY,
Commissioner of Customs.

Approved: March 8, 2001.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the **Federal Register**, March 28, 2001 (66 FR 16850)]

(T.D. 01–27)

SYNOPSES OF DRAWBACK RULINGS

The following are synopses of drawback rulings approved December 13, 1999, to February 5, 2001, inclusive, pursuant to Subparts A & B, Part 191 of the Customs Regulations.

In the synopses below are listed for each drawback ruling approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the date the application was signed, the Port Director to whom the ruling was forwarded to or approved by, the date on which it was approved and the ruling number.

Date: March 29, 2001.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

(A) Company: **Avecia Inc.**
Articles: Pro-Jet Fast Magenta 2C liquid
Merchandise: Not modified
Supplemental application signed: July 14, 2000
Ruling Forwarded to PD of Customs: New York, December 7, 2000
Effect on other rulings: Successor to **Zeneca Inc. T.D. 96-86-Z (44-04898-000)** under 19 U.S.C. 1313(s)
Ruling: 44-04898-001

(B) Company: **Aventis CropScience USA-LP**
Articles: FINISH® and other pesticide formulations
Merchandise: Cyclanilide technical
Application signed: April 28, 2000
Ruling Forwarded to PD of Customs: New York, September 29, 2000
Effect on other rulings: Successor to **Rhône-Poulenc AG Company, Inc., T.D. 00-42-X (44-05213-001)** under 19 U.S.C. 1313(s)
Ruling: 44-05213-002

(C) Company: **Bayer Corporation (successor to Miles Inc., under 19 U.S.C. 1313(s))**
Articles: P-cresidine-o-sulfonic acid, moist
Merchandise: P-cresidine, Distilled Fused
Application signed: July 14, 2000

Ruling Forwarded to PD of Customs: New York, December 11, 2000
Effect on other rulings: None
Ruling: 44-06049-000

(D) Company: **Bayer Corp. (successor to Miles Inc. under 19 U.S.C. 1313(s))**
Articles: Vulkanox 4020 (rubber anti-oxidant)
Merchandise: 4-amino diphenylamine (4-ADPA)
Application signed: July 14, 2000
Ruling Forwarded to PD of Customs: New York, December 13, 2000
Effect on other rulings: None
Ruling: 44-06050-000

(E) Company: **The Bayer Corp. (successor to Miles Inc. under 19 U.S.C. 1313(s))**
Articles: Desmodur XP-7039E (an aliphatic polyisocyanate)
Merchandise: Desmodur Z-4370/2; Desmodur Z-4470SN
Application signed: July 14, 2000
Ruling Forwarded to PD of Customs: New York, December 13, 2000
Effect on other rulings: None
Ruling: 44-06051-000

(F) Company: **The Boeing Company**
Articles: Aircraft parts, subassemblies and finished manufactured aircraft
Merchandise: Steel, titanium, nickel, stainless steel, and aluminum (sheet, coil, plate and forgings)
Application signed: June 21, 2000
Ruling Forwarded to PDs of Customs: Houston & San Francisco, November 15, 2000
Effect on other rulings: Terminates **T.D. 00-23-E (44-05867-000) and unpublished ruling 44-05867-001**
Ruling: 44-05867-002

(G) Company: **BP Amoco Chemical Company**
Articles: Not modified
Merchandise: Not modified
Supplemental application signed: September 3, 1999
Modification approved by PD of Customs in accordance with §191.8(g)(2): Houston, December 13, 1999
Effect on other rulings: Modifies **T.D. 93-42-B; 44-00144-000** to cover change in company name from **Amoco Chemical Company**
Ruling: 44-00144-001

(H) Company: **BP Amoco Chemical Company**
Articles: Not modified
Merchandise: Not modified
Supplemental application signed: September 3, 1999
Modification approved by PD of Customs in accordance with

§191.8(g)(2): Houston, December 13, 1999
Effect on other rulings: Modifies **T.D. 94-82-A; 44-00141-000** to cover change in company name from **Amoco Chemical Company**
Ruling: 44-00141-001

(I) Company: **BP Amoco Chemical Company**
Articles: Not modified
Merchandise: Not modified
Supplemental application signed: September 3, 1999
Modification approved by PD of Customs in accordance with §191.8(g)(2): Houston, December 13, 1999
Effect on other rulings: Modifies **T.D. 95-10-B; 44-03575-000** to cover change in company name from **Amoco Chemical Company**
Ruling: 44-03575-001

(J) Company: **BP Amoco Chemical Company**
Articles: Not modified
Merchandise: Not modified
Supplemental application signed: September 3, 1999
Modification approved by PD of Customs in accordance with §191.8(g)(2): Houston, December 13, 1999
Effect on other rulings: Modifies **T.D. 93-62-1; 44-00143-000** to cover change in company name from **Amoco Chemical Company**
Ruling: 44-00143-001

(K) Company: **Chevron Chemical Company LLC**
Articles: Engine oil additives
Merchandise: Sulfonic acid AS 584D; lubricating oil additives OLOA 225, OLOA 260, OLOA 270, OLOA 270M, OLOA 411, OLOA 200, OLOA219, OLOA 219C and OLOA 2508J; alkylate AL 304
Application signed: August 3, 2000
Ruling Forwarded to PDs of Customs: Houston, San Francisco & New York, February 5, 2001
Effect on other rulings: Terminates **T.D. 00-42-E (44-05930-000)**
Ruling: 44-05930-001

(L) Company: **Ciba Specialty Chemicals Corporation**
Articles: Tinuvin® 234 and Tinuvin® 900
Merchandise: 2,4-bis-(2-phenyl-iso-propyl)-phenol
Application signed: August 10, 2000
Ruling Forwarded to PD of Customs: New York, January 17, 2001
Effect on other rulings: None
Ruling: 44-06058-000

(M) Company: **CREANOVA Inc.**
Articles: Colorants
Merchandise: Various pigments
Application signed: August 12, 1999

Ruling Forwarded to PD of Customs: New York, December 26, 2000
Effect on other rulings: None
Ruling: 44-06056-000

(N) Company: **Day-Glo Color Corporation**
Articles: Pigments; paints; ink and ink bases
Merchandise: Toluene sulfonamide
Application signed: March 9, 2000
Ruling Forwarded to PD of Customs: New York, November 15, 2000
Effect on other rulings: None
Ruling: 44-06039-000

(O) Company: **Dow AgroSciences LLC (successor to DowElanco under 19 U.S.C. 1313(s))**
Articles: 3,4-Difluorobenzonitrile (DFBN)
Merchandise: 3,4-Dichlorobenzonitrile (DCBN)
Application signed: June 27, 2000
Ruling Forwarded to PDs of Customs: Boston, San Francisco & Houston, October 31, 2000
Effect on other rulings: None
Ruling: 44-06032-000

(P) Company: **Filtrona Greensboro, Inc.**
Articles: Filter rods
Merchandise: Porous plugwrap; nonporous plugwrap; cellulose acetate tow
Application signed: January 22, 2001
Ruling Forwarded to PD of Customs: New York, January 30, 2001
Effect on other rulings: None
Ruling: 44-06063-000

(Q) Company: **Gaylord Chemical Corporation**
Articles: Dimethyl sulfoxide (DMSO)
Merchandise: Dinitrogen tetroxide
Application signed: July 26, 2000
Ruling Forwarded to PD of Customs: New Orleans, November 6, 2000
Effect on other rulings: None
Ruling: 44-06035-000

(R) Company: **Konica Manufacturing USA, Inc.**
Articles: Photo sensitive paper (color photographic paper)
Merchandise: Various chemicals
Application signed: July 11, 2000
Ruling forwarded to PD of Customs: San Francisco, December 22, 2000
Effect on other rulings: None
Ruling: 44-06053-000

(S) Company: **Milliken & Company**
Articles: Textured (a/k/a manufactured & POY), space dyed, spun and

air-entangled yarns; woven & wrap knit fabrics, knit fabric wipes; knit fabric; tufted carpet; tufted & woven rugs; carpet tiles; walk-off mats a/k/a rubber backed mats
Merchandise: Nylon yarn a/k/a nylon filament yarn & bulk continuous filament; polyester yarn a/k/a polyester filament yarn; polypropylene yarn a/k/a olefin yarn & polypropylene filament yarn; nylon & polyester staple fibers; polyester/nylon yarn a/k/a polyfil yarn & microfilament yarn; solution dyed polyester spun yarns
Application Signed: February 17, 2000
Ruling forwarded to PD of Customs: Chicago, New York & Miami, October 26, 2000
Effect on other rulings: Terminates **T.D. 98-27-Q (44-05359-000)** and **T.D. 99-30-T (44-05483-000)**
Ruling: 44-06030-000

(T) Company: **Nor'Eastern Trawl Systems Inc.**
Articles: Netting
Merchandise: Polyethylene, polyester, and nylon yarns
Application signed: November 9, 2000
Ruling Forwarded to PD of Customs: Boston, January 16, 2001
Effect on other rulings: None
Ruling: 44-06057-000

(U) Company: **Ormco Corporation**
Articles: Archwires for orthodonic use
Merchandise: Nickel/titanium wire; nickel/titanium/copper wire
Application signed: February 5, 2000
Ruling forwarded to PD of Customs: New York, September 29, 2000
Effect on other rulings: None
Ruling: 44-06025-000

(V) Company: **Reynolds Metals Company**
Articles: Paper backed aluminum foil
Merchandise: Aluminum foil
Application signed: September 29, 2000
Ruling forwarded to PD of Customs: New York, October 17, 2000
Effect on other rulings: None
Ruling: 44-06028-000

(W) Company: **Rogers Corp.**
Articles: Coverfilms (R/Flex Materials); Laminates (RO 3000/4000; RT Duroid 5000/6000; TMM; and Ultralam)
Merchandise: Electrodeposited copper foil; alloy 110 rolled copper foil; copper foil treated with bonding; fiberglass fibers and fabric; polypropylene sheets; prepreg (saturated fiberglass); titanium dioxide
Application signed: March 17, 2000
Ruling forwarded to PD of Customs: New York, December 18, 2000

Effect on other rulings: None
Ruling: 44-06052-000

(X) Company: **Saint-Gobain Performance Plastics Corporation (successor to Furon Company under 19 U.S.C. 1313(s))**
Articles: PTFE coated woven fiberglass fabric
Merchandise: Glass style F101 fabric
Application signed: October 9, 2000
Ruling forwarded to PD of Customs: Boston, October 16, 2000
Effect on other rulings: None
Ruling: 44-06027-000

(Y) Company: **Swift Textiles, Inc.**
Articles: Denim fabric
Merchandise: Cotton fibers
Application signed: February 7, 2000
Ruling Forwarded to PDs of Customs: Chicago, New York, Miami & San Francisco, October 30, 2000
Effect on other rulings: None
Ruling: 44-06033-000

(Z) Company: **3V, Inc.**
Articles: Additional optical brighteners (Optiblanc products)
Merchandise: Not modified
Supplemental application signed: May 11, 2000
Ruling Forwarded to PD of Customs: Miami, October 23, 2000
Effect on other rulings: Modifies T.D. 99-66-Y (44-05764-000)
Ruling: 44-05764-001

U.S. Customs Service

General Notice

NOTICE OF ISSUANCE OF FINAL DETERMINATIONS CONCERNING MULTIFUNCTIONAL MACHINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determinations

SUMMARY: This document provides notice that Customs has issued two final determinations concerning the country of origin of certain multifunctional machines which are being offered for sale to the U.S. Government. Customs held in both determinations that the country of origin of the multifunctional machines is Japan.

DATES: The final determinations were issued on March 22, 2001. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of the final determinations within 30 days of March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Attorney-Advisor, Special Classification and Marking Branch, (202) 927-1034.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on March 22, 2001, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued two final determinations concerning the country of origin of certain multifunctional machines which are being offered to the U.S. Government. The U.S. Customs ruling numbers are HQ 561568 and 561734. Copies of the final determinations are attached. The final determinations were issued under procedures set forth in 19 CFR 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §§251 1–18). Customs concluded in the two determinations that components imported into Japan are substantially transformed as a consequence of the assembly operations performed in Japan with numerous Japanese-origin parts, resulting in the multifunctional machines. Accordingly, the country of origin of the multifunctional machines is Japan. This document gives notice pursuant to §177.29, Customs Regulations (19 CFR §177.29), of the two final determinations. Any party-at-interest, as defined in 19 CFR §177.22(d), may seek judicial review of the final

determinations within 30 days of March 29, 2001.

Dated: March 23, 2001.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Attachments]

[ATTACHMENT A]

March 22, 2001
CLA-02 RR:CR:SM 561734 BLS
Category: Classification

FUSAE NARA, ESQ.
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, New York 10004-1490

Re: U.S. Government procurement; final determination; country of origin of multifunctional machine; printer, copier, facsimile machine; substantial transformation; Title III, Trade Agreements Act of 1979 (19 U.S.C. §2511 *et seq.*); 19 CFR §177.21 *et seq.*

DEAR MS. NARA:

This is in reference to your letter of November 5, 1999, on behalf of your client, Sharp Electronics Corporation ("Sharp"), requesting a final determination under Subpart B of Part 177, Customs Regulations (19 CFR §177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations regarding whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy America" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a multifunctional machine, Model No. 6600J, which Sharp Corporation ("Sharp") is offering for sale to U.S. Government agencies. Accordingly, Sharp is a party-at-interest within the meaning of 19 CFR §177.22(d)(1), and is entitled to request this final determination.

Facts:

Sharp makes a multifunctional machine, Sharp Model Number FO-6600J ("6600J"), which can function as a printer, copier, and fax machine. The 6600J will be sold to U.S. Government agencies. You note that the 6600 J is identical to the Model FO-6600 in structure, function and appearance, so that the service manual for Model FO 6600, which is enclosed, may serve as a reference for the 6600J.

You state that the 6600J is assembled in Japan with the use of Japanese and other foreign parts and components. Your letter included a bill of materials for this model, which indicates the countries from which each part, component, or subassembly is sourced. The bill of materials indicates that there are 227 parts/components/units ("parts"). Based on the information provided in the bill of materials,

108 parts are sourced from Japan, 92 parts from Thailand, three parts from China, and 24 parts from other countries.

The 6600J is assembled in Japan from eight subassemblies or units, each of which is also assembled in Japan. The subassemblies are as follows:

1) Scanner Unit, which you characterize as the heart of the machine, is built in Japan with 126 parts and components. In the assembly of the scanner unit, the following processes take place:
- scanner driver unit is assembled;
- scanner frame unit is assembled using over 40 pieces of parts, including light emitting diode ("LED"), sensors, gears, rollers, etc.
- The panel unit is built by connecting a panel assembly from Thailand and a document guide upper unit of Japanese origin;
- The optical guide is built from a charge coupled device ("CCD"), PWB imported from Thailand, mirror, lens, and other imported and Japanese parts;
- The scanner unit is built by combining the panel unit, optical unit, document guide lower unit and scanner driver unit.
- After the assembly, the scanner unit is tested to confirm that it scans printed letters and images properly;

2) Printer unit: The printer engine imported from China is assembled with 25 other parts and components into the printer unit. The assembly requires the connection of safety switches and cables to the printer engine.

3) Left Panel Unit: The left side panel includes the plastic cabinet panel, speaker, telephone handset, and hook switch PWB.

4) Power Supply Unit: The Power Supply PWB is produced in Japan and assembled with other parts and components to form a power supply unit, which is then incorporated into the upper chassis unit as described below.

5) Hopper Unit: Various parts and plastic components are assembled with a gear and springs to form the hopper assembly.

6) Upper Chassis Unit: The upper chassis unit is built with several PWBs, including control PWB unit, TEL LIU (telephone interface unit No. 1) PWB, interface PWB and line control PWB, all of which are imported from Thailand. Those PWBs are combined with the Japanese origin power supply unit, described above, and they are fastened onto a reinforced panel. The upper chassis unit holds the upper cassette of printing paper for Model No. FO-6600J.

7) Lower Chassis Unit: The lower chassis unit includes TEL LIU 2 (telephone line interface unit No. 2) PWB, which is imported from Thailand. Combined with 28 parts on a reinforced panel, the lower chassis forms the cavity to hold the lower cassette of printing paper for Model No. FO-6600J.

8) Inner Tray Unit: The inner tray unit to hold printout documents are assembled from seven parts.

In the final assembly, the above eight units or subassemblies built in Japan are assembled into a finished multifunctional machine with an additional 101 parts and components, including exterior panels. The upper chassis unit and lower chassis unit are connected to make the mechanism unit. The scanner unit, printer unit, hopper unit and inner tray unit are connected to the top of the mechanism unit. Then a front cabinet is connected to the front of the mechanism unit. After all units have been connected, cables, labels and other additional parts are attached to the mechanism unit to complete Model No. FO-6600J.

Finally, using sophisticated inspection equipment such as an exchanger, withstanding tester, sending level meter and dial tester, the finished product undergoes an extensive inspection procedure to confirm that all of its functions as a copier, computer printer, telephone and facsimile machine operate properly. The printing and scanning functions are tested to ensure that letters and images are properly scanned and printed. The computer printer function is tested to confirm that print commands from a computer are properly handled. The telecommunications functions are tested to ensure proper transmission and reception of telephone and facsimile signals. Then, Model No. FO-6600J is cleaned and packaged with product manual, trays, and a toner cartridge for shipment to the United States.

You request a final determination pursuant to 19 CFR §177.25 that the country

of origin is Japan.

Issue:

What is the country of origin of the multifunctional machine, Sharp Model Number FO-6600J?

Law and Analysis:

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country is to be determined by the rule of substantial transformation. 19 U.S.C. §2518(4)(B). An article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. 19 U.S.C. §2518(4)(B)(ii); *see also United States v. Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267 (CAD. 98) (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT 204, 573 F.Supp. 1149(1983), *aff'd*, 2 Fed. Cir. 105, 741 F.2d 1368 (1984).

Additionally, if the manufacturing or combining process is merely a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026,1029(1982), *affd*, 702 F.2d 1022 (Fed. Cir. 1983). In Customs Service Decision ("C.S.D.") 85–25 (September 25, 1984), Customs set forth the standards to determine when an assembly operation constitutes a substantial transformation. To substantially transform an article, an assembly must be complex and meaningful as opposed to a simple assembly. Factors to be considered include the time, cost and skill involved, the number of components assembled and the number of operations. *See also Texas Instruments v. United States*, 681 F.2d. 778 (CCPA 1982).

In support of your assertion that the 6600J is substantially transformed in Japan, you cite Headquarters Ruling Letter ("HQ") 560433 (September 19, 1997), which involved the assembly of audio/video receivers from foreign components and 16 foreign subassemblies. In that case, Customs found that the components and subassemblies lost their separate identities and became an integral part of the finished audio/video receiver as a result of the manufacturing operations. The character of the foreign components was also changed as a result of the assembly in that the finished article, an audio/video receiver, is visibly different than any of the individual foreign components and it acquires a new use in that it can receive and process audio and video signals.

In reaching this conclusion, Customs cited to several prior HQs, which you also cite as support for finding that the 6600J is substantially transformed as a result of complex assembly operations in Japan. *See* HQ 734045 (October 8,1991) (assembly of subassemblies and other components into a lap top computer is a substantial transformation); HQ 732170 (January 5,1990) (television cabinet containing a tuner, speaker and circuit board was substantially transformed when assembled with domestic components into a finished television receiver); HQ 711967 (March 17, 1980) (television sets assembled in Mexico with components from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes).

Based on the information provided and consistent with the court decisions and Customs rulings cited above, we find that the components imported into Japan that are used in the production of the 6600J multifunctional machine in the manner described above are substantially transformed as a result of the operations performed. Eight separate subassemblies are first assembled in Japan and then are joined together to create the finished multifunctional machine. The more than 227 parts and components, which are assembled in Japan, lose their separate identities when they become integral parts of the multifunctional machine. The finished machine clearly has a name, character and use distinct from the indi-

vidual components from which it is made. Therefore, we find that the country of origin of the Model No. FO-6600J multifunctional machine is Japan.

Holding:

Based on the facts presented, the non-Japanese parts, which are further processed and assembled into the multifunctional machine in Japan, in the manner described above, are substantially transformed. Accordingly, the country of origin of the Model No. FO-6600J multifunctional machine is Japan. Notice of this final determination will be given in the Federal Register as required by 19 CFR §177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR §177.31, that Customs reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR §177.30, any party-at-interest, as defined at 19 CFR §177.22(d), may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[ATTACHMENT B]

March 22, 2001
CLA-02 RR:CR:SM 561568 MFC
Category: Classification

FUSAE NARA, ESQ.
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, New York 10004-1490

Re: U.S. Government procurement; final determination; country of origin of multifunctional machine; printer, copier, facsimile machine; substantial transformation; Title III, Trade Agreements Act of 1979 (19 U.S.C. §2511); 19 CFR §177.21 *et seq.*

DEAR MS. NARA:

This is in reference to your letter of November 5, 1999, on behalf of your client, Sharp Electronics Corporation ("Sharp"), requesting a final determination under Subpart B of Part 177, Customs Regulations (19 CFR §177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations regarding whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy America" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain multifunctional machines which Sharp Corporation ("Sharp") assembles in Japan from Japanese and other foreign components and which are being offered for sale to U.S. Government agencies. Accordingly, Sharp is a party-at-interest within the meaning of 19 CFR §177.22(d)(1), and is entitled to request this final determination.

Enclosed with the request were service manuals for Facsimile Model FO-4700 and a brochure and service manual for Facsimile Model FO-6600.

Facts:

Sharp makes a multifunctional machine, Sharp Model Number FO-4700J ("J model"), which can function as a printer, copier, and fax machine. The J model will be sold to U.S. Government agencies. You note that the J model is identical to the Model FO-4700 in structure, function and appearance, so that the service manual for Model FO-4700 may serve as a reference for the J model. You also note that the Model FO4700 is sold to the general U.S. market and is made in Thailand, while the J model will be sold to the U.S. Government and is assembled in Japan.

You state that the J model is assembled in Japan with the use of Japanese and other foreign parts and components. Your letter included a bill of materials for the J model, which indicates the countries from which each part, component, or subassembly is sourced. The bill of materials indicates that there are 302 parts/components/units ("parts"). Based on the information provided in the bill of materials, 155 parts are sourced from Thailand, 144 parts are sourced from Japan, and three parts are sourced from China.

The J model is assembled in Japan from seven subassemblies or units, each of which is also assembled in Japan. The subassemblies are as follows:

1) Scanner Unit, which you characterize as the heart of the machine, is built in Japan with 99 parts. In the assembly of the scanner unit, the following processes take place:
   - contact image sensor (CIS) is assembled;
   - scanner frame unit is assembled using over 50 parts, including CIS unit, scanner drive unit, gears, rollers, etc.;
   - panel unit is built by connecting a panel assembly from Thailand and a document guide upper unit of Japanese origin;
   - scanner unit is built by combining the scanner frame unit, panel unit and document guide lower unit;
   - after the assembly, the scanner unit is tested to confirm that it scans printed letters and images properly;
2) Speaker unit: a speaker is soldered to connector wires.
3) Upper Cover Guide Unit: more than 30 components including hopper guides and sensors are assembled together.
4) Printer unit: assembly of the printer engine imported from China with 10 other parts and components. The assembly requires the connection of safety switches and cables to the printer engine.
5) Left Panel unit: the cabinet unit panel includes the plastic cabinet panel, holders and hooks, and forms the space to hold the printer unit.
6) Power Supply unit: the power supply PWB (printed wiring board) unit is assembled with other parts and components to form a power supply unit, which is then incorporated into the printer unit.
7) Paper feed tray unit: various parts and plastic components are assembled to form the paper feed tray unit.

In the final assembly in Japan, the above seven units or subassemblies are assembled into a finished multifunctional machine with an additional 90 parts and components. The scanner unit and power supply unit are connected to make the mechanism unit. The speaker unit, printer unit, upper cover unit and paper feed tray unit are connected to the top of the mechanism unit. Then, the front and rear cabinets are connected to the mechanism unit. After all units have been connected, cables, labels, and other additional parts are attached to the mechanism unit to complete the machine. You state that the processes in Japan require a number of skilled workers and sophisticated equipment.

The finished product undergoes inspections to ensure that it functions as a copier, computer printer, telephone and facsimile machine. The J model is then cleaned and packaged with product manuals, trays, and a toner cartridge for shipment to the U.S.

Your request seeks a final determination pursuant to 19 CFR §177.25 that the country origin is Japan.

Issue:

What is the country of origin of the multifunctional machine, Sharp Model Number FO-4700J?

Law and Analysis:

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country is to be determined by the rule of substantial transformation. 19 U.S.C. §2518(4)(B). An article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. 19 U.S.C. §2518(4)(B)(ii); *see also United States v. Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267 (CAD. 98) (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT 204, 573 F.Supp. 1149(1983), *aff'd*, 2 Fed. Cir. 105, 741 F.2d 1368 (1984).

Additionally, if the manufacturing or combining process is merely a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026,1029(1982), *affd*, 702 F.2d 1022 (Fed. Cir. 1983). In Customs Service Decision ("C.S.D.") 85–25 (September 25, 1984), Customs set forth the standards to determine when an assembly operation constitutes a substantial transformation. To substantially transform an article, an assembly must be complex and meaningful as opposed to a simple assembly. Factors to be considered include the time, cost and skill involved, the number of components assembled and the number of operations. *See also Texas Instruments v. United States*, 681 F.2d. 778 (CCPA 1982).

In support of your assertion that the J model is substantially transformed in Japan, you cite Headquarters Ruling Letter ("HQ") 560433 (September 19, 1997), which involved the assembly of audio/video receivers from foreign components and 16 foreign subassemblies. Customs found that the components and subassemblies lost their separate identities and became an integral part of the finished audio/video receiver as a result of the manufacturing operations. The character of the foreign components was also changed as a result of the assembly in that the finished article, an audio/video receiver, is visibly different than any of the individual foreign components and it acquires a new use in that it can receive and process audio and video signals. In reaching this conclusion, Customs cited to several prior HQs, which you also cite as support for finding that the J model is substantially transformed as a result of complex assembly operations in Japan. *See* HQ 734045 (October 8,1991) (assembly of subassemblies and other components into a lap top computer is a substantial transformation); HQ 732170 (January 5,1990) (television cabinet containing a tuner, speaker and circuit board was substantially transformed when assembled with domestic components into a finished television receiver); HQ 711967 (March 17, 1980) (television sets assembled in Mexico with components from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes).

Based on the information provided and consistent with the court decisions and Customs rulings cited above, we find that the components imported into Japan that are used in the production of the J model multifunctional machine in the manner described above are substantially transformed as a result of the operations performed. Seven separate subassemblies are first assembled in Japan and then are joined together, along with an additional 90 parts and components, to create the finished J model. The more than 300 parts and components which are assembled in Japan lose their separate identities when they become integral parts of the multifunctional machine. The finished machine clearly has a name, character and use distinct from the individual components from which it is made. Therefore, we find that the country of origin of the J model multifunctional machine is Japan.

You asked that our determination also be applied to similar multifunctional machines, Model Nos. FO-5550J, FO-5700J, and FO-5800J, which are produced using "virtually identical" production processes as the J Model at issue. To the extent that the processing of these other models is the same as that described above, this ruling applies.

Holding:

Based on the facts presented, the non-Japanese parts, which are further processed and assembled into the multifunctional machine in Japan, in the manner described above, are substantially transformed. Accordingly, the country of origin of the multifunctional machine, the J model, is Japan. Notice of this final determination will be given in the Federal Register as required by 19 CFR §177.29.

Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR §177.31, that Customs reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR §177.30, any party-at-interest, as defined at 19 CFR §177.22(d), may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the **Federal Register**, March 29, 2001 (66 FR 17222)]

U.S. Customs Service

March 28, 2001

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

U.S. Customs Service

General Notices

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN PICTURE FRAMES WITH CHRISTMAS MOTIFS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of picture frames with Christmas motifs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions concerning the tariff classification of picture frames with Christmas motifs under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on January 10, 2001, in Vol. 35, No. 2 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary

compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke HQ 962410, dated July 15, 1999, was published on January 10, 2001, in Vol. 35, No. 2 of the CUSTOMS BULLETIN. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 962410, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963282 (*see* the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: March 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 26, 2001
CLA-2 RR:CR:GC 963282 AML
Category: Classification
Tariff No. 3924.90.20

MS. JENNIFER ANDERSON
EXPEDITORS CONSULTING SERVICES, LLC
999 Third Avenue
Suite 4401
Seattle, WA 98104

Re: Reconsideration of HQ 962410; picture frames with Christmas motifs.

DEAR MS. ANDERSON:

This is in reference to Headquarters Ruling Letter (HQ) 962410, issued to the Port Director of Customs, Seattle, Washington, in reply to protest 3001-98-100381, initiated by you on behalf of Costco Wholesale, which concerned the classification of picture frames with Christmas motifs under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered HQ 962410 and now believe that the classification set forth is incorrect. (However, because HQ 962410 was a decision on Application for further review of Protest 3001-98-100381, any reliquidation of the entry in that protest will be unaffected by this decision.)

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on January 10, 2001, in Vol. 35, No. 2 of the CUSTOMS BULLETIN, proposing to revoke HQ 962410 and to revoke the treatment pertaining to the picture frames with Christmas motifs. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

Facts:

The articles at issue were described in HQ 962410 as follows:

The subject articles are very decorative picture frames with Christmas motifs. The motifs are in high bas-relief; virtually three-dimensional. One frame depicts a fireplace adorned with the decorations readily associated with Christmas: a decorated Christmas tree with presents beneath it; garland on the mantle; and present-filled stockings hanging from the mantle. The second depicts Santa Claus holding his list in one hand and holding a stocking filled with presents in the other. The remainder of the frame depicts a decorated Christmas tree and Santa's sack, overflowing with children's toys and wrapped presents. Both frames are manufac-

tured from what appears to be a poly-resin material, and are designed to accommodate a 5" by 7" photograph. The protestant asserts that the weight and value of the constituent materials of the frames are as follows: polyresin – 60% of the weight and 55% of the value; glass – 20% of the weight and 10% of the value; plastic backing – 10% of the weight and 20% of the value; face paper – 1% of the weight and 1% of the value; and packaging – 9% of the weight and 14% of the value.

In HQ 962410, Customs classified the picture frames under subheading 9505.10.40, HTSUS, which provides for articles for Christmas festivities and parts and accessories thereof, other, of plastics.

Issue:

Whether the picture frames are classified in subheading 3924.90.20, HTSUS, as other household articles of plastic, picture frames; or in subheading 9505.10.40, HTSUS, as other articles for Christmas festivities and parts and accessories thereof, of plastics?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:	
3924.90	Other:	
3924.90.20		Picture frames.
	* * *	
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:	
9505.10	Articles for Christmas festivities and parts and accessories thereof:	
	Other:	
9505.10.40		Of plastics.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Note 1(k) to Chapter 95 excludes from classification in Chapter 95, among other things, "parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV) or similar goods of plastics (Chapter 39)." Note 2 to Section XV provides, in pertinent part, that "part of general use" include "(c) [a]rticles of headings Nos. 83.01, 83.02, 83.08, 83.10 and frames and mirrors, of base metal, of heading No. 83.06."

Heading 8306 provides for, among other things, picture frames of base metal. *See also* the ENs to heading 8306. Given the fact that the subject picture frames are composed primarily of polyresin, they are, for classification purposes considered to be composed of plastic (*See* Chapter 39: polyresin is a plastic under the HTSUS). Therefore, the picture frames with Christmas motifs are plastic parts of general use and classification as such under heading 9505 is precluded.

Plastic picture frames are provided for *eo nomine* under subheading 3924.90.20, HTSUS. The subject articles will be so classified.

Holding:

The picture frames with Christmas motifs are classifiable under subheading 3924.90.20, HTSUS, which provides for "[t]ableware, kitchenware, other household articles and toilet articles, of plastics: [o]ther: [p]icture frames."

Effect on other Rulings:

HQ 962410 is revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A "SANTA/SNOWMAN" LIGHT TESTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a "Santa/Snowman" light tester.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of a "Santa/Snowman" light tester, under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on January 3, 2001, in Vol. 35, No. 1 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY B85466, dated June 4, 1997, was published on January 3, 2001, in Vol. 35, No. 1 of the CUSTOMS BULLETIN. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices. As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY B85466, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964627 (*see* the Attachment to this document). Additionally, pur-

suant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: March 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 26, 2001
CLA-2 RR:CR:GC 964627 AML
Category: Classification
Tariff No. 9030.39.00

MS. LORI ALDINGER
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

Re: "Santa/Snowman" light tester.

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) B85466, issued to you by the Director, Customs National Commodity Specialist Division on June 4, 1997, which concerned the classification of a "Santa/Snowman" light tester under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY B85466 and now believe that the classification set forth is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on January 3, 2001, in Vol. 35, No. 1 of the CUSTOMS BULLETIN, proposing to revoke NY B85466 and to revoke the treatment pertaining to the "Santa/Snowman" light tester. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

Facts:

The articles were described in NY B85466 as follows:

The "Santa/Snowman Light Tester", designated as Rite Aid item #960318, consists, in this instance, of a plastic representation of a Santa Claus. It is battery operated and contains a bulb tester slot located near the middle of the item. Christmas type bulbs can be checked by inserting them into the tester slot. The item also contains a button with LED which is used to indicate that the batteries are working, and a device attached to the bottom which facilitates the removal of bad bulbs.

Issue:

Whether the light testers are classifiable under subheading 8543.89.96, HTSUS, as other electric machines not specified or elsewhere included in Chapter 85, or under subheading 9030.39.00, HTSUS, as other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other, or under subheading 9030.89.00, HTSUS, as other instruments and apparatus for measuring or checking electrical quantities, other?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
	Other:
	Other:
	Other:
8543.89.96	Other.
	* * *
9030	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:
	Other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device:
9030.39.00	Other:
9030.39.00.40	For measuring or checking
	Other instruments and apparatus:
9030.89.00	Other.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8543 provides, in pertinent part, for "electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter[.]" The ENs to heading 8543, HTSUS, provide, in pertinent part, that:

> This heading covers all electrical appliances and apparatus, *not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature*, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90 [emphasis added].

Thus, if the light testers are provided for by another heading within the HTSUS, classification under heading 8543 is precluded. Further, we note that articles of Chapter 90 are excluded from classification in Chapter 85 by virtue of Note 1(m) to Section XVI.

Heading 9030 provides for "oscilloscopes, spectrum analyzers and *other* instruments and apparatus for measuring *or checking* electrical quantities...other instruments and apparatus, for measuring or *checking* voltage, current, resistance or power, without a recording device" [emphasis added]. The ENs to heading 9030 contemplate, among other things, articles that check (perceive and identify) the presence of electricity and the viability of electrical circuits. The Court in *United States v. Corning Glass Works*, 66 CCPA 25, 27, 586 F. 2d 822, 825 (1978), quoting Webster's Third New International Dictionary, 381 (1971) stated: "Check" is defined as "to inspect and ascertain the condition of esp. to determine that the condition is satisfactory: * * * investigate and ensure accuracy, authenticity, reliability, safety or satisfactory performance of * * *: to investigate and make sure about conditions or circumstances * * *." The light tester at issue checks the viability of electrical circuits in light bulbs. This function inclines us to believe that heading 9030 best describes the light testers at issue.

Heading 9030, HTSUS, refers to "other instruments and apparatus . . . for . . . checking voltage, current, resistance or power," making an enumeration of specific things followed by a general word or phrase. "The general word or phrase is held to refer things of the same kind as those specified." *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994). We find that the light testers are *ejusdem generis* with the "measuring, checking or automatically controlling instruments and apparatus, whether or not optical or electrical" described in the Section Notes, heading and EN to heading 9030. The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that "[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157.

The ENs to heading 9030 provide, in pertinent part, that:

> Some electrical measuring instruments can be used for many purposes, for example, electrical or electronic instruments known as "universal testers" (*e.g.*, multimeters) which serve for the rapid measurement of voltages (direct or alternating), currents (direct or alternating), resistances and capacitances.
>
> * * *
>
> The main types of electrical measurements are:
>
> (I) Measurement of electric currents. This is carried out, in particular, by means of galvanometers or amperemeters (ammeters).
>
> (II) Voltage measurement, by voltmeters, potentiometers, electrometers, etc. The electrometers used for measuring very high voltages are electrostatic; they differ from the usual type of voltmeter in that they are fitted with spheres or plates held on insulating pillars.
>
> (III) Measurement of resistance and conductivity, by means of ohmmeters or measuring bridges, in particular.
>
> (IV) Measurement of power by means of wattmeters.

The *McGraw-Hill Scientific and Technical Encyclopedia*, under the headings indicated below, provides the following definitions of the devices described in the EN to heading 9030:

An *ammeter* measures the flow of current by converting electrical energy to mechanical energy.

The *voltmeter* is a device that converts electrical energy to physical energy in order to measure the electrical potential in volts. Most voltmeters are classical GALVANOMETERS that have been modified to measure the potential rather than the current. If a suitable resistor is placed in the circuit in parallel with the meter, the voltage can be determined as a product of the resistance value times the current; the meter can thus be calibrated directly in volts. In order to measure the voltage of alternating current, a rectifier must be provided, which is a device that converts alternating current into direct current. Voltmeters are essential to electricians, scientists, and industrial workers. One basic meter movement is often used to measure volts, amperes, and resistance in ohms by providing suitable resistors and switches, and a small standard electrical source. Such a combination is called a multimeter or a Volt-Milliammeter (VOM).

A *galvanometer* is an instrument that measures the amount of electrical current by converting electrical energy into the physical displacement of a coil, which in turn moves a pointer or light beam. In a galvanometer, a coil of fine wire is suspended between the poles of a permanent magnet, so that when the coil is magnetized as current passes through it, the like poles of magnet and coil repel each other and cause an attached pointer to deflect across a calibrated scale. When a light beam is used instead of a pointer, a mirror is mounted on the side of the moving coil and a fixed beam of light is directed at the mirror. As the coil turns, the reflected image of the light moves along a translucent, calibrated panel. The coil may be mounted on a spindle, whose ends turn on rubies or very hard steel. The direct-current ammeter is a type of calibrated galvanometer that measures larger currents; a calibrated galvanometer may also be used as a direct-current voltmeter, which measures direct voltage using Ohm's law. Galvanometers are currently being replaced by modern digital instruments.

While certain electrical phenomena such as the photoelectric effect allow for direct measurement of an emitted electric current, other electrical measurements are performed with the aid of an external current or voltage source, so that the resistance, self-inductance, or capacitance can be determined. These measurements are in the end also based on determining the current intensity or voltage. They are performed chiefly with a WHEATSTONE BRIDGE, a circuit that requires a current source, a number of comparison resistances, and a calibrated POTENTIOMETER. The measurement is based on a null measurement of the voltage between two tapping points.

The subheadings within heading 9030 contain reference to "[o]ther instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device, other, for measuring or checking voltage, current or resistance" – articles we find to be substantially similar to the light testers in question. Further, the ENs provide that "instruments and apparatus for measuring or checking electrical quantities may be indicating or recording types." The light tester at issue indicates whether a light bulb is functional. (*See Simmon Omega, Inc. v. United States*, 83 Cust. Ct. 14, C.D. 4815 (1979), for the fundamental longstanding tariff classification principle that Congress did not intend to foreclose the classification of future innovations and technological advancements in tariff provisions. To hold otherwise would result in the classification of any and every new product in the basket provisions of the nomenclature, a result that was specifically targeted for elimination under the HTSUS.) Accordingly, we find that the light testers under consideration are sufficiently similar to the articles provided for in heading 9030, HTSUS, as to be classifiable in that heading, and to preclude classification in heading 8543, HTSUS.

GRI 6 provides in pertinent part that "the classification of goods in the subhead-

ings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable."

Consideration of the subheadings within heading 9030 reveal that subheading 9030.39 best describes the articles at issue.

This determination comports with prior rulings of this office. In New York Ruling Letters (NY) 881920, dated January 25, 1993, a battery tester was classified under subheading 9030.39.0040, HTSUS; D87008, dated February 3, 1999, the circuit tester contained in an automotive repair kit was classified under subheading 9030.39.0080; E82946, dated June 17, 1999, electromagnetic compatibility (EMC) testers were classified under subheading 9030.89.00, HTSUS; F82289, dated February 11, 2000, a voltage tester was classified under subheading 9030.39.00; and in Headquarters Ruling Letter (HQ) 958898, dated May 14, 1996, a "hi test rope tester" was held to be classifiable in subheading 9030.39.00, HTSUS.

Holding:

The light testers are classifiable in subheading 9030.39.00, HTSUS, which provides for other instruments and apparatus, for measuring or checking voltage, current, resistance or power, without a recording device: other.

Effect on other Rulings:

NY B85466 is hereby REVOKED. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF VEGETABLE PEELERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters, and revocation of treatment relating to tariff classification of vegetable peelers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking or modifying six ruling letters pertaining to the tariff classification of vegetable peelers under the Harmonized Tariff Schedule of the United States ("HTSUS") and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on December 6, 2000. No comments were

received in response to the notice.
EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on December 6, 2000, proposing to revoke or modify six ruling letters pertaining to the tariff classification of vegetable peelers. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

As stated in the proposed notice, this revocation and modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reli-

ance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying or revoking HQ 950609, NY 809925, NY 832235, NY 870912, NY 883743, NY 883746 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964639, HQ 964640, HQ 964648, HQ 964649, HQ 964650, and HQ 964651, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964639, HQ 964640, HQ 964648, HQ 964649, HQ 964650, and HQ 964651 are set forth as Attachments A through F, respectively, to this document.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

March 26, 2001
CLA-2 RR:CR:GC 964639 GOB
Category: Classification
Tariff No. 8205.51.30

MR. DAN TIMNEY
YAMATO CUSTOMS BROKERS U.S.A., INC.
353 Point San Bruno Blvd. South
San Francisco, CA 94080

Re: HQ 950609 modified; vegetable peeler.

DEAR MR. TIMNEY:

This letter is with respect to HQ 950609 dated January 7, 1992, issued to you on behalf of CGS International, concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a kitchen organizer set consisting of various items.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 950609, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notice.

Facts:

In HQ 950609, we determined that a steel vegetable peeler was classified in subheading 8211.92.20, HTSUS, as "Knives with cutting blades ... : Other: ... Other knives having fixed blades: With rubber or plastic handles: Kitchen and butcher knives." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification of the steel vegetable peeler. All other determinations of HQ 950609 remain in effect.

Issue:

What is the tariff classification of the vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205	Handtools...not elsewhere specified or included...:					
		Other handtools ... and parts thereof:				
8205.51			Household tools, and parts thereof:			
				Of iron or steel:		
8205.51.30					Other (including parts)	
*	*	*	*	*	*	
8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:					
		Other:				
8211.92			Other knives having fixed blades:			
				With rubber or plastic handles:		
8211.92.20					Kitchen and butcher knives	

* * * * * *

8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...
8214.90	Other:
8214.90.90	Other (including parts)

EN 82.05 provides that "[t[his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the "other hand tools" group includes " 'steels' and other knife sharpeners of metal; pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household tools are included in heading 8205, HTSUS, some of which have cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the steel vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." and it is classified in subheading 8205.51.30, HTSUS. This determination is based upon the following.

Heading 8205, HTSUS, more accurately describes vegetable peelers than heading 8214, HTSUS, in that vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82.05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as knives. Vegetable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included, is more specific for vegetable peelers than is either heading 8211 or heading 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The steel vegetable peeler is provided for in heading 8205, HTSUS, and is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..."

Effect on other Rulings:

HQ 950609 is modified with respect to the classification of the steel vegetable peeler. All other determinations of HQ 950609 remain in effect. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

March 26, 2001
CLA-2 RR:CR:GC 964640 GOB
Category: Classification
Tariff No: 8205.51.30

MR. RICHARD ROSTER
A.V. REILEY INTERNATIONAL LTD.
1555 N. Michael Drive
Wood Dale, IL 60191

Re: NY 809925 modified; vegetable peeler.

DEAR MR. ROSTER:

This letter is with respect to New York Ruling Letter ("NY") 809925, issued to you by the Customs National Commodity Specialist Division, New York, on June 2, 1995, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS") of three kitchen items.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 809925, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notice.

Facts:

In NY 809925, the National Commodity Specialist Division issued a classification ruling with respect to three articles. The pertinent article for the purpose of this ruling is a steel swivel peeler with a rubber handle used to peel vegetables and fruit (the "vegetable peeler"). The vegetable peeler was classified in subheading 8211.92.20, HTSUS, as "Knives with cutting blades ... : Other: ... Other knives having fixed blades: With rubber or plastic handles: Kitchen and butcher knives.". We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification. All other determinations of NY 809925 remain in effect.

Issue:

What is the tariff classification of a vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205 Handtools...not elsewhere specified or included...:

		Other handtools ... and parts thereof:
8205.51		Household tools, and parts thereof:
		Of iron or steel:
8205.51.30		Other (including parts)
*	*	* * * *
8211		Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
		Other:
8211.92		Other knives having fixed blades:
		With rubber or plastic handles:
8211.92.20		Kitchen and butcher knives
*	*	* * * *
8214		Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...
8214.90		Other:
8214.90.90		Other (including parts)

EN 82.05 provides that "[t]his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the other hand tools group includes "pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household articles are included in heading 8205, HTSUS, some with cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the steel vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." and it is classified in subheading 8205.51.30, HTSUS. This determination is based upon the following.

Heading 8205, HTSUS, more accurately describes vegetable peelers than heading 8214, HTSUS in that vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82.05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as knives. Veg-

etable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included is more specific for vegetable peelers than is either heading 8211 or 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The steel vegetable peeler is provided for in heading 8205, HTSUS, and is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..."

Effect on other Rulings:

NY 809925 is modified with respect to the classification of the steel vegetable peeler. All other determinations of NY 809925 remain in effect. In accordance with 19 U.S.C. 1625(c) this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

March 26, 2001
CLA-2 RR:CR:GC 964648 GOB
Category: Classification
Tariff No. 8205.51.30

MR. W. ZIMMER
J. J. GAVIN & CO., INC.
130 Church Street
New York, N.Y. 10007-2221

Re: NY 832235 revoked; vegetable peeler.

DEAR MR. ZIMMER:

This letter is with respect to New York Ruling Letter ("NY") 832235 dated October 26, 1988, issued to you on behalf of Rowoco, Inc. by the Customs National Commodity Specialist Division, New York concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a vegetable peeler.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 832235, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to that notice.

Facts:

In NY 832235, the National Commodity Specialist Division issued a classification ruling with respect to an all metal vegetable peeler with a three inch working part and an overall length of approximately six inches. The working part is a concave-convex, sharpened piece cut out in the center. The vegetable peeler was classified in subheading 8214.90.90, HTSUS, as "Other articles of cutlery ... : ... Other: ... Other ..." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of a vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205	Handtools...not elsewhere specified or included...:	
	Other handtools ... and parts thereof:	
8205.51	Household tools, and parts thereof:	
	Of iron or steel:	
8205.51.30	Other (including parts)	
*	*	*
8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:	
	Other:	
8211.92	Other knives having fixed blades:	
	With rubber or plastic handles:	
8211.92.20	Kitchen and butcher knives	
*	*	*
8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...	
8214.90	Other:	

8214.90.90 Other (including parts)

EN 82.05 provides that "[t]his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the other hand tools group includes "pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household articles are included in heading 8205, HTSUS, some of which have cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the steel vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." If the vegetable peeler is of steel, it is classified in subheading 8205.51.30, HTSUS. If the vegetable peeler is of aluminum, it is classified in subheading 8205.51.60, HTSUS. These determinations are based upon the following.

Heading 8205, HTSUS, more accurately describes vegetable peelers than heading 8214, HTSUS in that vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82.05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as knives. Vegetable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included, is more specific for vegetable peelers than is either heading 8211 or 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The vegetable peeler is provided for in heading 8205, HTSUS. If the vegetable peeler is of steel, it is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..." If the vegetable peeler is of aluminum, it is classified in subheading 8205.51.60, HTSUS, as "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of aluminum."

Effect on other Rulings:

NY 832235 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

March 26, 2001
CLA-2 RR:CR:GC 964649 GOB
Category: Classification
Tariff No. 8205.51.30

MR. JOHN PAUL VYBORNY
COLLECTRON OF ARIZONA, INC.
3000 Mariposa Road
Nogales, AZ 85621

Re: NY 870912 revoked; vegetable peeler.

DEAR MR. VYBORNY:

This letter is with respect to New York Ruling Letter ("NY") 870912, issued to you on behalf of Ekco Group, Inc. by the Customs National Commodity Specialist Division, New York, on February 19, 1992, concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a vegetable peeler.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 870912, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to that notice.

Facts:

In NY 870912, the National Commodity Specialist Division issued a classification ruling with respect to an all-metal vegetable peeler with a swivel-type stainless steel blade. The cutting edges are formed by the longitudinal slit down the middle of the blade. The vegetable peeler was classified in subheading 8214.90.90, HTSUS, as "Other articles of cutlery ... : ... Other: ... Other ..." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of a vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205 Handtools...not elsewhere specified or included...:

Other handtools ... and parts thereof:

8205.51		Household tools, and parts thereof:
		Of iron or steel:
8205.51.30		Other (including parts)
*	*	* * * *
8211		Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
		Other:
8211.92		Other knives having fixed blades:
		With rubber or plastic handles:
8211.92.20		Kitchen and butcher knives
*	*	* * * *
8214		Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...
8214.90		Other:
8214.90.90		Other (including parts)

EN 82.05 provides that "[t[his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the other hand tools group includes "pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household articles are included in heading 8205, HTSUS, some of which have cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the steel vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." and it is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..." This determination is based upon the following.

Heading 8205, HTSUS, more accurately describes the vegetable peelers than heading 8214, HTSUS in that the vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82.05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as

knives. Vegetable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included, is more specific for vegetable peelers than either heading 8211 or 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The steel vegetable peeler is provided for in heading 8205, HTSUS, and is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..."

Effect on other Rulings:

NY 870912 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT E]

March 26, 2001
CLA-2 RR:CR:GC 964650 GOB
Category: Classification
Tariff No. 8205.51.30

MR. EDWARD J. FEDER
A. BURGHART SHIPPING CO., INC.
700 Rahway Avenue
Union, NJ 07083-6634

Re: NY 883743 revoked; vegetable peeler.

DEAR MR. FEDER:

This letter is with respect to New York Ruling Letter ("NY") 883743, issued to you on behalf of Acme Metal Goods Manufacturing Co. by the Customs National Commodity Specialist Division, New York, on March 30, 1992, concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a vegetable peeler.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 883743, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to that notice.

Facts:

In NY 883743, the National Commodity Specialist Division issued a classifica-

tion ruling with respect to a swivel vegetable peeler which is six inches long. The blade section is two and one-half inches long and has a center longitudinal slit with double cutting edges. The vegetable peeler was classified in subheading 8214.90.90, HTSUS, as "Other articles of cutlery ... : ... Other: ... Other ..." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of a vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205	Handtools...not elsewhere specified or included...:
	Other handtools ... and parts thereof:
8205.51	Household tools, and parts thereof:
	Of iron or steel:
8205.51.30	Other (including parts)
* * * * * *	
8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
	Other:
8211.92	Other knives having fixed blades:
	With rubber or plastic handles:
8211.92.20	Kitchen and butcher knives
* * * * * *	
8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...
8214.90	Other:
8214.90.90	Other (including parts)

EN 82.05 provides that "[t[his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the other hand tools group includes "pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household articles are included in heading 8205, HTSUS, some with cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the steel vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." If the vegetable peeler is of steel, it is classified in subheading 8205.51.30, HTSUS. If the vegetable peeler is of aluminum, it is classified in subheading 8205.51.60, HTSUS. These determinations are based upon the following.

Heading 8205, HTSUS, more accurately describes the vegetable peelers than heading 8214, HTSUS in that the vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82 05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as knives. Vegetable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included, is more specific for vegetable peelers than either heading 8211 or 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The vegetable peeler is provided for in heading 8205, HTSUS. If the vegetable peeler is of steel, it is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..." If the vegetable peeler is of aluminum, it is classified in subheading 8205.51.60, HTSUS, as "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of aluminum."

Effect on other Rulings:

NY 883743 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT F]

March 26, 2001
CLA-2 RR:CR:GC 964651 GOB
Category: Classification
Tariff No. 8205.51.30

MR. EDWARD J. FEDER
A. BURGHART SHIPPING CO., INC.
700 Rahway Avenue
Union, NJ 07083-6634

Re: NY 883746 revoked; vegetable peeler.

DEAR MR. FEDER:

This letter is with respect to New York Ruling Letter ("NY") 883746, issued to you on behalf of Acme Metal Goods Manufacturing Co. by the Customs National Commodity Specialist Division, New York, on March 30, 1992, concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a vegetable peeler.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 883746, as described below, was published in the CUSTOMS BULLETIN on December 6, 2000. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notice.

Facts:

In NY 883746, the National Commodity Specialist Division issued a classification ruling with respect to a vegetable peeler with a stainless steel swivel blade. The blade has a wide center slit with a single cutting edge. The vegetable peeler is in the general shape of a hippopotamus and is known as a "hippo peeler." The vegetable peeler was classified in subheading 8214.90.90, HTSUS, as "Other articles of cutlery ... : ... Other: ... Other ..." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of a vegetable peeler – is it provided for in heading 8205, HTSUS, heading 8211, HTSUS, or heading 8214, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8205 Handtools...not elsewhere specified or included...:

		Other handtools ... and parts thereof:
8205.51		Household tools, and parts thereof:
		Of iron or steel:
8205.51.30		Other (including parts)
*	*	* * * *
8211		Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
		Other:
8211.92		Other knives having fixed blades:
		With rubber or plastic handles:
8211.92.20		Kitchen and butcher knives
*	*	* * * *
8214		Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); ...
8214.90		Other:
8214.90.90		Other (including parts)

EN 82.05 provides that "[t[his heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the nomenclature ... together with certain other tools or appliances specifically mentioned in the title." EN 82.05 further provides that the other hand tools group includes "pastry cutters and jaggers; graters for cheese, etc.; ... cheese slicers, vegetable slicers ..." [Emphasis in original.] Thus, certain household articles are included in heading 8205, HTSUS, some with cutting blades.

EN 82.11 provides that heading 8211 covers: **"Non-folding knives for kitchen, trade or other uses ...** This category includes, *inter alia*: ... fruit peeling knives." EN 82.11 also provides that heading 8211 excludes: "Articles of cutlery of **heading 82.14."** [Emphasis in original.]

EN 82.14 provides that heading 8214 includes: "(1) **Paper knives, letter openers, erasing knives, pencil sharpeners ... (4) Butchers' or kitchen choppers, cleavers, and mincing knives.** These articles do not have the normal shape of a knife, and may be designed for use with one or both hands." [Emphasis in original.]

After a consideration of the possible tariff classifications for the vegetable peeler, it is our determination that it is provided for in heading 8205, HTSUS, as "Handtools ... not elsewhere specified or included ..." and it is classified in subheading 8205.51.30, HTSUS. This determination is based upon the following.

Heading 8205, HTSUS, more accurately describes the vegetable peelers than heading 8214, HTSUS in that the vegetable peelers are more similar to hand tools (heading 8205) than to cutlery. As noted above, EN 82.05 provides that the "other hand tools" group includes vegetable slicers, which we believe to be substantially similar to hand-held vegetable peelers. We believe that vegetable slicers involve "similar action" to vegetable peelers. With respect to headings 8211 and 8214, HTSUS, we note that vegetable peelers are not knives, and cannot be used as

knives. Vegetable peelers involve a specific, fine action, a more limited range of action than can be accomplished with knives. Thus, for tariff purposes, heading 8205, HTSUS, hand tools not elsewhere specified or included, is more specific for vegetable peelers than is either heading 8211 or 8214, HTSUS.

Our determination that vegetable peelers are classified in subheading 8205.51.30, HTSUS, is consistent with our determinations in NY A80298 dated February 20, 1996, NY A80301 dated February 20, 1996, NY B86142 dated June 10, 1997, and NY C84668 dated May 27, 1998.

Holding:

The vegetable peeler is provided for in heading 8205, HTSUS, and is classified in subheading 8205.51.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ... : Of iron or steel: ... Other ..."

Effect on other Rulings:

NY 883746 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TEXTILE POUCHES

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of textile pouches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of textile pouches and any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of February 14, 2001, Vol. 35, No. 7. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch: (202) 927-2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that, in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In Port Decision (PD) C80793, dated November 3, 1997, a telemetry unit pouch, identified by code number 65288 and designed to hold a telemetry unit (a heart monitor/transmitter), was erroneously classified in subheading 4202.92.9025, textile category 670, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Since the pouch does not possess the character of the heading 4202 exemplars, whose essential characteristics and purposes are to organize, store, protect and carry various items, Customs is reclassifying the pouch under heading 6307, HTSUSA, which covers "Other made up [textile] articles." Headquarters Ruling Letter (HQ) 961173 revoking PD C80793 is set forth as an "Attachment" to this document.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs is revoking Port Ruling Letter (PD) C80793, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 961173, *supra*. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

As stated in the notice of proposed revocation, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: March 21, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 21, 2001
CLA-2 RR:CR:TE 961173 GGD
Category: Classification
Tariff No. 6307.90.9989

MS. DEBRA WRIGHT
KIMBERLY-CLARK CORPORATION
6316 Airport Freeway
Fort Worth, Texas 76117

Re: Revocation of PD C80793; Other Made Up Article of Heading 6307; Not Holster of Heading 4202; *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd 69 F.3d 495 (Fed. Cir. 1995).

DEAR MS. WRIGHT:

In Port Ruling Letter (PD) C80793, issued November 3, 1997, to Tecnol, Incorporated (which was subsequently acquired by Kimberly-Clark Corporation), a pouch made in Mexico, identified by code number 65288, and designed to hold a telemetry unit (a heart monitor/ transmitter), was classified in subheading 4202.92.9025, textile category 670, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Trunks...holsters and similar containers; traveling bags...: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers." In response to a request for reconsideration, we have reviewed PD C80793 and have found the ruling to be in error. Therefore, this ruling revokes PD C80793.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of PD C80793 was published on February 14,

2001, in the CUSTOMS BULLETIN, Volume 35, Number 7.

Facts:

Subsequent to the request for reconsideration, a sample described as the "Tecnol Standard Telemetry Unit Pouch" was submitted. The article, although identified by new product code number 71825 (Tecnol's product code number 65288 was changed upon Kimberly-Clark's acquisition of the company in December 1997), is said to be the same in all material respects as the pouch classified in PD C80793. The sample is a flat, open-top pouch which measures approximately 7-1/2 inches in height by 6 inches in width. Attached to the pouch are two sets of straps, one of which is designed to tie around the wearer's neck and the other of which is designed to tie around the wearer's waist. The straps and the pouch are composed entirely of nonwoven, man-made textile material which is quite flimsy. The top of the pouch has no closure and the interior is not lined. The pouch is a disposable product that is designed to hold a telemetry unit close to the body of a hospitalized patient and is not intended for reuse. The items are imported in boxes, each of which contains 15 pouches.

Issue:

Whether the telemetry unit pouch is properly classified under heading 4202, HTSUSA, or under heading 6307, HTSUSA.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Pouches composed of textile materials have been classified in both headings 4202 and 6307, HTSUSA, depending upon their construction and the purpose(s) for which they are designed. Pouches classified outside of heading 4202, HTSUSA, are generally those considered not specially designed to contain particular items, and/or not adequately constructed to sustain repeated use.

Heading 4202, HTSUSA, covers "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper."

In *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995), the Court of International Trade held that the essential characteristics and purposes of the heading 4202 exemplars are to organize, store, protect and carry various items. With respect to the residual provision for "similar containers" in heading 4202, the Court found that the rule of *ejusdem generis* requires only that merchandise classifiable under heading 4202, possess the essential character or purpose running through all of the enumerated exemplars. EN (c) to heading 4202 indicates that the heading does not cover articles which, although they may have the character of containers, are not similar to those enumerated in the heading. Such articles fall in heading 4205 if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

The pouch at issue has no lining or padding and would appear to provide little in the way of protection for the telemetry unit. The pouch's interior has no fittings or other features designed to organize contents. The pouch is designed not for portability, but primarily to hold electronic equipment close to the body. The textile fabric is flimsy, in part, because the pouch is designed not for durability, but to hold a telemetry close to a patient's heart without creating discomfort. We note that the containers of heading 4202 are generally those designed and intended to contain items of personal property during travel. This pouch is designed to contain equipment that is normally the property of a hospital whose personnel would use the pouch to better monitor in-patient treatment. Although the telemetry unit pouch may have the character of a container, in light of the above, it is not similar to those enumerated in heading 4202.

Heading 6307, HTSUSA, covers other made up textile articles, including dress patterns. Note 1(l) to Section XI (in which heading 6307 falls) states: "This section does not cover: Articles of textile materials of heading 4201 or 4202." The EN to heading 6307 suggest that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. The EN further indicate that the heading includes goods such as domestic laundry or shoe bags and similar articles, and that the heading excludes travel goods...and all similar containers of heading 4202. We find that the telemetry unit pouch is classified under heading 6307, specifically in subheading 6307.90.9989, HTSUSA.

Holding:

The article described as the "Tecnol Standard Telemetry Unit Pouch" and identified by product code number 71825 (previously code number 65288) is classified in subheading 6307.90.9989, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other." The general column one duty rate is 7 percent *ad valorem*.

PD C80793, issued November 3, 1997, is hereby revoked.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TEXTILE BOOK COVERS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letters and treatment relating to the classification of textile book covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United

States (HTSUS), of textile book covers. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of January 24, 2001, Vol. 35, No. 4. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textiles Branch: (202) 927-2339.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY C84799, dated March 11, 1998, and PD D80149, dated August 11, 1998, was published on January 24, 2001, in Vol. 35, No. 4, of the CUSTOMS BULLETIN. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8, of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to these notices.

In NY C84799, dated March 11, 1998, and PD D80149, dated August 11, 1998, textile book covers were classified under heading 4202, HTSUS, which provides for *inter alia* travel, sports and similar bags. Since the issuance of these rulings, Customs has had a chance to review the classification of this merchandise and has determined that the classification determination in NY C84799 and PD D80149 is in error. We have determined that the instant book covers are properly

classified under heading 6307, HTSUS, which provides for other made up textile articles. HQ 964204 revoking NY C84799 is set forth as "Attachment A" to this document. HQ 962235 revoking PD D80149 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY C84799, PD D80149 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964204 and HQ 962235, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice.

As stated in the proposed notice, this revocation will cover any rulings that are contrary to the position set forth in this notice which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) contrary to the position set forth in this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: March 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

March 27, 2001
CLA-2 RR:CR:TE 964204 SS
Category: Classification
Tariff No. 6307.90.9989

MR. COREY KLESTADT
TRANS-WORLD SHIPPING CORP.
53 Park Place
New York, NY 10007

Re: Classification of Book Cover; Heading 4202, HTSUSA; Explanatory Note (c) to Heading 4202, HTSUSA; Heading 6307, HTSUSA; Revocation of NY C84799.

DEAR MR. KLESTADT:

This letter is pursuant to Headquarters' reconsideration of New York Ruling (NY) C84799, dated March 11, 1998, issued to you on behalf of your client, Hi-Performance Co. Ltd., regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a book cover manufactured in China.

Pursuant to section 625 (c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY C84799, as described below, was published in the CUSTOMS BULLETIN on January 24, 2001. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8, of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received.

Facts:

The sample described in NY C84799 is a book cover designed to contain one book. The item features double zippered compartments on either side. When opened, one side features a full width mesh zippered storage pocket and a pad holder. The other side is designed to contain a book. The front and rear exterior feature full width pockets. The item is carried by means of double webbed textile carrying handles. It appears that classification of the item under heading 4202, HTSUSA, was based on the fact that it was considered to be a carrying case that could contain "multi personal effects" rather than a book cover. However, it is the belief of this office that the item is primarily a book cover.

Issue:

What is the proper classification for the book cover?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The possible headings under consideration are: heading 4202, HTSUSA, which covers attache cases, brief cases and similar containers; and heading 6307, HTSUSA, which covers other made up textile articles.

Heading 4202, HTSUSA, provides for, *inter alia*, attache cases, briefcases, and similar containers. The exemplars named in heading 4202, HTSUSA, have in common the purpose of organizing, storing, protecting, and carrying various items. However, EN (c) to heading 4202, HTSUSA, indicates that the heading does not cover articles which, although they may have the character of containers, are not similar to those enumerated in the heading and includes the following items as examples: **book covers**, reading jackets, file-covers, and document-jackets. EN (c) further states that such articles fall in heading 4205, HTSUSA, if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

Heading 6307, HTSUSA, provides for other made up textile articles. As stated above, EN (c) directs that book covers be classified in heading 4205, HTSUSA, if made of leather and in other chapters if made of other materials. Heading 4205, HTSUSA, is the residual provision for leather articles. Similarly, heading 6307, HTSUSA, is the residual provision for other textile articles. Accordingly, a book cover made of textile material that is excluded from heading 4202, HTSUSA, would be classified under heading 6307, HTSUSA.

Since the book cover has areas for the organization, storage and protection of various items and a handle that allows for easy carrying, it appears to have characteristics common to the enumerated exemplars of heading 4202, HTSUSA. However, EN (c) to heading 4202, HTSUSA, indicates that "book covers" are specifically excluded from heading 4202, HTSUSA. Thus, the real issue in this case is whether or not the subject merchandise is a book cover as contemplated by the EN or something more similar to the exemplars of heading 4202, HTSUSA. In order to determine whether the book cover is excluded from or classified under heading 4202, HTSUSA, we must decide whether it merely has the character of a container, or whether its purpose is to organize, store, protect, and carry various items and is thus similar to the articles enumerated in heading 4202, HTSUSA.

Although the book cover at issue has the character of a container, with perhaps more features than a simple book cover, it does not have the requisite physical attributes Customs has found common to similarly sized containers of heading 4202, HTSUSA, such as significant carrying capacity. The merchandise possesses the character of a book cover or jacket in that it is primarily designed and specifically constructed with a zippered interior compartment in which a book may be inserted. This interior compartment is specially sized to accommodate or fit a single book, not numerous documents, papers or other contents. The jacket or cover feature is the focal point of the product and is preeminent in a consumer's decision to purchase the item. Additionally, the book cover serves to organize and perhaps protect small and/or flat items. The bulk of the article is comprised of space designed to hold a book. The remaining compartment is not designed to store, protect, and carry additional items such as newspapers, a small umbrella and/or other objects normally carried in an attache case or briefcase. The compartment does not have gussets and cannot be expanded to permit the storage of bulky, large items; rather, the compartment is flat in construction and is suitable only for small items that are ancillary to the predominant jacket/cover feature. Although the subject book cover may have more features than a simple book cover, it still retains its fundamental character, functions principally as a cover or jacket for a book, and is marketed and sold as such. The added features merely serve to enhance its primary purpose, which is to provide a convenient and organized method by which to study a book. Accordingly, we find that the subject book cover merely has the character of a container and is not similar to the exemplars listed in heading 4202, HTSUSA. This ruling is consistent with Headquarters Ruling Letter (HQ) 962227, dated June 7, 1999, and HQ 962757, dated June 21, 2000. For other rulings excluding jacket-like articles from heading 4202, HTSUSA, *see* HQ 956940, dated November 25, 1994; HQ 960989, dated July 20, 1998; and HQ 961418, dated August 4, 1998.

Textile book covers are classified under subheading 6307.90.9989, HTSUSA. *See* New York Ruling Letter (NY) 851233, dated April 24, 1990; NY 816450, dated November 21, 1995; NY A84808, dated June 25, 1996; NY C83995, dated February

20, 1998; NY C86045, dated April 3, 1998; and NY D80906, dated September 1, 1998. Since at least 1996, Customs has been classifying book covers incorporating outer pockets, interior pockets, handles, pen-holder loops and extensive decorative features under subheading 6307.90.99, HTSUSA. *See* NY A81442, dated March 28, 1996; NY A82707, dated April 25, 1996; NYA83330, dated May 15, 1996; NY A86713, dated August 22, 1996; NY A87823, dated October 1, 1996; NY A88270, dated October 11, 1996; NY C80069, dated October 20, 1997; NY B85128, dated May 15, 1997; NY B86953, dated July 8, 1997; NY C86501, dated April 20, 1998; NY E87483, dated October 8, 1999; NY E82659, dated June 9, 1999; and NY F81481, dated January 13, 2000. The subject book cover appears to be similar to the book covers classified by Customs under heading 6307, HTSUSA, and we find no reason to depart from the established precedent of classifying textile book covers under heading 6307, HTSUSA.

Holding:

The book cover is classified in subheading 6307.90.9989, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." The general column one duty rate is seven percent (7%) *ad valorem*.

NY C84799 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

March 27, 2001
CLA-2 RR:CR:TE 962235 SS
Category: Classification
Tariff No. 6307.90.9989

MR. RONALD K. DUDLEY
PHOENIX INTERNATIONAL FREIGHT SERVICES, LTD.
2415 Director's Row, Suite C
Indianapolis, IN 46241

Re: Classification of Book Cover; Heading 4202, HTSUSA; Explanatory Note (c) to Heading 4202, HTSUSA; Heading 6307, HTSUSA; Revocation of PD D80149.

DEAR MR. DUDLEY:

This letter is pursuant to Headquarters' reconsideration of Port Ruling (PD) D80149, dated August 11, 1998, issued to you on behalf of your client, Dickson's, Inc., regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a book cover manufactured in Korea.

Pursuant to section 625 (c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of PD D80149, as described below, was published in the CUSTOMS BULLETIN on January 24, 2001. As explained in a notice published on February 1, 2001, in Vol. 35, No. 8, of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received.

Facts:

The book cover is described in PD D80149 as follows:

> The submitted sample, Carry All Canvas Bible Cover w/Eagle Embroidery – BCT series, is designed with a compartment to carry a bible and a separate compartment to carry cards, papers and writing accessories. This case closes with a zipper and is carried by two self-fabric handles.

As the name indicates, the book cover is designed to contain a book. There is nothing that limits the use of the product to bibles and we note that any other type of book may be used with the product.

Issue:

What is the proper classification for the book cover?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The possible headings under consideration are: heading 4202, HTSUSA, which covers attache cases, brief cases and similar containers; and heading 6307, HTSUSA, which covers other made up textile articles.

Heading 4202, HTSUSA, provides for, *inter alia*, attache cases, briefcases, and similar containers. The exemplars named in heading 4202, HTSUSA, have in common the purpose of organizing, storing, protecting, and carrying various items. However, EN (c) to heading 4202, HTSUSA, indicates that the heading does not cover articles which, although they may have the character of containers, are not similar to those enumerated in the heading and includes the following items as examples: **book covers**, reading jackets, file-covers, and document-jackets. EN (c) further states that such articles fall in heading 4205, HTSUSA, if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

Heading 6307, HTSUSA, provides for other made up textile articles. As stated above, EN (c) directs that book covers be classified in heading 4205, HTSUSA, if made of leather and in other chapters if made of other materials. Heading 4205, HTSUSA, is the residual provision for leather articles. Similarly, heading 6307, HTSUSA, is the residual provision for other textile articles. Accordingly, a book cover made of textile material that is excluded from heading 4202, HTSUSA, would be classified under heading 6307, HTSUSA.

Since the book cover has areas for the organization, storage and protection of various items and a handle that allows for easy carrying, it appears to have characteristics common to the enumerated exemplars of heading 4202, HTSUSA. However, EN (c) to heading 4202, HTSUSA, indicates that "book covers" are specifically excluded from heading 4202, HTSUSA. Thus, the real issue in this case is whether or not the subject merchandise is a book cover as contemplated by the EN or something more similar to the exemplars of heading 4202, HTSUSA. In order to determine whether the book cover is excluded from or classified under heading 4202, HTSUSA, we must decide whether it merely has the character of a container, or whether its purpose is to organize, store, protect, and carry various items and is thus similar to the articles enumerated in heading 4202, HTSUSA.

Although the book cover at issue has the character of a container, with perhaps

more features than a simple book cover, it does not have the requisite physical attributes Customs has found common to similarly sized containers of heading 4202, HTSUSA, such as significant carrying capacity. The merchandise possesses the character of a book cover or jacket in that it is primarily designed and specifically constructed with a zippered interior compartment in which a bible or book may be inserted. This interior compartment is specially sized to accommodate or fit a single bible or book, not numerous documents, papers or other contents. The jacket or cover feature is the focal point of the product and is preeminent in a consumer's decision to purchase the item. Additionally, the book cover serves to organize and perhaps protect small and/or flat items. The bulk of the article is comprised of space designed to hold a bible or book. The remaining compartment is not designed to store, protect, and carry additional items such as newspapers, a small umbrella and/or other objects normally carried in an attache case or briefcase. The compartment does not have gussets and cannot be expanded to permit the storage of bulky, large items; rather, the compartment is flat in construction and is suitable only for small items that are ancillary to the predominant jacket/cover feature. Although the subject book cover may have more features than a simple book cover, it still retains its fundamental character, functions principally as a cover or jacket for a bible or book, and is marketed and sold as such. The added features merely serve to enhance its primary purpose, which is to provide a convenient and organized method by which to study a bible or book. Accordingly, we find that the subject book cover merely has the character of a container and is not similar to the exemplars listed in heading 4202, HTSUSA. This ruling is consistent with Headquarters Ruling Letter (HQ) 962227, dated June 7, 1999, and HQ 962757, dated June 21, 2000. For other rulings excluding jacket-like articles from heading 4202, HTSUSA, *see* HQ 956940, dated November 25, 1994; HQ 960989, dated July 20, 1998; and HQ 961418, dated August 4, 1998.

Textile book covers are classified under subheading 6307.90.9989, HTSUSA. *See* New York Ruling Letter (NY) 851233, dated April 24, 1990; NY 816450, dated November 21, 1995; NY A84808, dated June 25, 1996; NY C83995, dated February 20, 1998; NY C86045, dated April 3, 1998; and NY D80906, dated September 1, 1998. Since at least 1996, Customs has been classifying "bible book covers" incorporating outer pockets, interior pockets, handles, pen-holder loops and extensive decorative features under subheading 6307.90.99, HTSUSA. *See* NY A81442, dated March 28, 1996; NY A82707, dated April 25, 1996; NYA83330, dated May 15, 1996; NY A86713, dated August 22, 1996; NY A87823, dated October 1, 1996; NY A88270, dated October 11, 1996; NY C80069, dated October 20, 1997; NY B85128, dated May 15, 1997; NY B86953, dated July 8, 1997; NY C86501, dated April 20, 1998; NY E87483, dated October 8, 1999; NY E82659, dated June 9, 1999; and NY F81481, dated January 13, 2000. The subject book cover appears to be similar to the book covers classified by Customs under heading 6307, HTSUSA, and we find no reason to depart from the established precedent of classifying textile book covers under heading 6307, HTSUSA.

Holding:

The book cover is classified in subheading 6307.90.9989, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." The general column one duty rate is seven percent (7%) *ad valorem*.

PD D80149 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF IMPULSE BAG SEALERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter, and revocation of treatment relating to tariff classification of impulse bag sealers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of impulse bag sealers under the Harmonized Tariff Schedule of the United States ("HTSUS") and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on February 21, 2001. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19

U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on February 21, 2001, proposing to revoke a ruling letter pertaining to the tariff classification of impulse bag sealers. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 962014 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964783. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964783 is set forth as an attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 27, 2001
CLA-2 RR:CR:GC 964783 GOB
Category: Classification
Tariff No. 8515.80.00

MR. WILLIAM J. DU
KING STAR INTERNATIONAL, INC.
581 Boyleston Street
Suite 702BC
Boston, MA 02116

Re: HQ 962014 revoked; Impulse bag sealers.

DEAR MR. DU:

This letter is with respect to HQ 962014, issued to you on October 1, 1999, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of impulse bag sealers. In that ruling, the PFS-200 and PFS-300 impulse bag sealers were classified in subheading 8543.89.96, HTSUS. We have reviewed that classification and determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 962014, as described below, was published in the CUSTOMS BULLETIN on February 21, 2001. No comments were received in response to the notice.

Facts:

The impulse bag sealers are described as follows in HQ 962014:

> The electric/battery powered heat sealing product roughly resembles a large paper cutter, with a thick base and large handle (instead of the paper-cutting blade) which operates by depressing the arm as one would a paper cutter. The PFS-200 and PFS-300 are constructed of cast iron or steel and are marketed to supermarkets and restaurants. When the interior surface of the hinged arm portion and the inner surface of the base make contact, heat is produced. The article is a product which uses micro-thermal technology to create an airtight seal of plastic bags to keep and preserve unused portions of food stored inside the bags.

Issue:

What is the tariff classification of the subject impulse bag sealers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8515 Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus ... :

8515.80.00 Other machines and apparatus

* * * * * *

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Other machines and apparatus:

8543.89 Other:

Other:

8543.89.96 Other

* * * * * *

Heading 8516, HTSUS, which includes "other electrothermic appliances of a kind used for domestic purposes," is not considered as the impulse bag sealers are not intended for domestic use. In HQ 962014, we stated: "The articles, by their size, weight, and construction, are not intended for domestic (in the household) use."

EN 85.15 (I) provides in pertinent part as follows:

> This group covers certain soldering, brazing or welding machines and apparatus ...
>
> Welding operations may be performed manually or be fully or partly automatic.
>
> These include:
> ...
> (H) **Machines and apparatus for welding thermoplastic materials.**
> ...
> (2) **Welding with electrically heated elements (heating element welding).** The surfaces to be joined are warmed by means of electrically heated elements and joined under pressure with or without additives.
> [Emphasis in original.]

Webster's Third New International Dictionary (1986) defines "weld" as: "**1 a**: to unite or consolidate (as metallic parts) by heating to a plastic or fluid state the surfaces of the parts to be joined and then allowing the metals to flow together ... **b**: to unite (plastics) in a similar manner by heating ..." *Dorland's Illustrated Medical Dictionary* (1994) defines "thermoplastic" as: "softening under heat and capable of being molded into shape with pressure, then hardening on cooling without undergoing chemical change."

We have carefully considered whether the impulse bag sealers are welding apparatus within the meaning of heading 8515, HTSUS. It is our conclusion that they are welding apparatus in that they are machines for welding or sealing plastic bags. EN 85.15 (I) (H) gives us guidance on the scope of the term "welding" in heading 8515, HTSUS, and it includes the welding of thermoplastic materials. The PFS-200 and PFS-300 impulse bag sealers are described by this EN.

Because heading 8515 is more specific than heading 8543 ("electrical machines and apparatus ... not specified or included elsewhere in this chapter ... "), we determine that the impulse bag sealers are provided for in heading 8515, HTSUS, and that they are classified in subheading 8515.80.00, HTSUS.

Holding:

The impulse bag sealers are classified in subheading 8515.80.00, HTSUS, as: "Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus ... : ... Other machines and apparatus."

Effect on other Rulings:

HQ 962014 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STEEL STRAINERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter, and revocation of treatment relating to tariff classification of steel strainers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of steel strainers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on January 24, 2001. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on January 24, 2001, proposing to modify a ruling letter pertaining to the tariff classification of steel strainers. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notice.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice,

may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY C87841 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964751. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964751 is set forth as Attachment A to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 26, 2001
CLA-2 RR:CR:GC 964751 GOB
Category: Classification
Tariff No. 7323.93.00

MR. GHANSHYAM R. PATEL
MIDWEST SWAMINARAYAN TEMPLE
1505 Bates Lane
Schaumberg, IL 60193

Re: NY C87841 modified; Steel strainers.

DEAR MR. PATEL:

This letter is with respect to New York Ruling Letter ("NY") C87841, issued to you by the Customs National Commodity Specialist Division on May 29, 1998.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY C87841, as described below, was published in the CUSTOMS BULLETIN on January 24, 2001. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notices.

Facts:

Your ruling request of May 6, 1998, describes certain steel strainers as follows: "Steel Strainers with handle 10" to 12" sizes [and] Steel Strainers with handle 7" to 9" sizes."

In NY C87841, among other articles not relevant herein, the steel strainers were classified in subheading 8205.51.30, Harmonized Tariff Schedule of the United States ("HTSUS"), which covers: "Handtools ... not elsewhere specified or included ... : Other handtools ... : Household tools ...: Of iron or steel: ... Other." We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification for this article. The classification set forth for the other articles in NY C87841 is not affected by this ruling.

Issue:

What is the tariff classification of the steel strainers?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel ... :	
	Other:	
7323.99	Other:	
	Not coated or plated with precious metal:	
	Other:	
7323.99.90		Other
*	* * * * *	
8205	Handtools ... not elsewhere specified or included ... :	
	Other handtools ... :	
8205.51	Household tools ... :	
	Of iron or steel:	
8205.51.30		Other (including parts)

Explanatory Note ("EN") 73.23 provides, in pertinent part, as follows:

This group comprises a wide range of iron or steel articles, **not more specifi-**

cally covered by other headings of the Nomenclature, used for table, kitchen or other household purposes ... These articles may be ... of iron or steel ... wire grill, wire cloth, etc ...

The group includes:

(1) **Articles for kitchen use** such as saucepans, steamers, pressure cookers, preserving pans ... ; basins, frying pans, roasting or baking dishes and plates; ... kettles, collanders ... salad washers ... funnels.

The heading **excludes**:
...
(d) Household articles having the character of tools, e.g., shovels of all kinds; cork-screws; cheese graters, etc.; larding needles; can openers; nut-crackers; bottle openers ... vegetable pressers, vegetable mashers **(Chapter 82)**.
[All emphasis in original.]

The Explanatory Note to Chapter 82 provides, in pertinent part, as follows:

This Chapter covers certain specific kinds of base metal articles, of the nature of tools, implements, cutlery, tableware, etc., which are excluded from the preceding Chapters of Section XV [Section XV includes Chapters 72–83] ... In general, the Chapter covers tools which can be used independently in the hand ...

Explanatory Note 82.05 (E) provides, in pertinent part, as follows:

(E) **Other hand tools ...**

This group includes:

(1) A number of household articles ... having the character of tools and accordingly not proper to heading 73.23, such as:

Flat irons ... curling irons; bottle openers, cork screws, simple can openers (including keys); nut crackers; cherry stoners (spring type); button hooks; shoe horns; "steels" and other knife sharpeners of metal; pastry cutters and jaggers; graters for cheese, etc.; "lightening" mincers (with cutting wheels); cheese slicers, vegetable slicers; waffling irons; cream or egg whisks, egg slicers; butter curlers; ice picks; vegetable mashers; larding needles; pokers, tongs, rakers and cover lifts for stoves or fire places. [Emphasis in original.]

For each of the items enumerated in EN 82.05 (E), a certain amount of effort must be applied in order for the hand tool to function. In contrast, a strainer can be held or rested over a container; the strainer performs its function while motionless. This "motionless function" is also involved in certain or all of the items enumerated above in EN 73.23 (A).

At GRI 1, it is our determination that the steel strainers are more accurately described as kitchen articles in heading 7323, HTSUS, than as handtools in heading 8205, HTSUS. This determination is supported by the EN's, excerpted above.

Therefore, we find that the steel strainers are classified in subheading 7323.99.90, HTSUS, as: "Table, kitchen or other household articles and parts thereof, of iron or steel ... : Other: ... Other: ... Not coated or plated with precious metal: ... Other: ... Other."

Holding:

The steel strainers are classified in subheading 7323.99.90, HTSUS, as: "Table, kitchen or other household articles and parts thereof, of iron or steel ... : Other: ... Other: ... Not coated or plated with precious metal: ... Other: ... Other."

Effect on other Rulings:

NY C87841 is modified as to the steel strainers. All other determinations of NY C87841 remain in effect. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF HAMMER WEDGES AND AXE WEDGES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of hammer wedges and axe wedges.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of hammer wedges and axe wedges under the Harmonized Tariff Schedule of the United States ("HTSUS") and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on January 17, 2001. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary

compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on January 17, 2001, proposing to revoke a ruling letter pertaining to the tariff classification of hammer wedges and axe wedges. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E83857 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 963729. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 963729, revoking NY E83857 is set forth as an attachment to this document.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 27, 2001
CLA-2 RR:CR:GC 963729 GOB
Category: Classification
Tariff No. 8201.40.60; 8205.20.30; 8205.20.60

JOSEPH R. HOFFRACKER
BARTHCO TRADE CONSULTANTS
7575 Holstein Avenue
Philadelphia, PA 19153

Re: NY E83857 revoked; Hammer wedge; Axe wedge.

DEAR MR. HOFFRACKER:

This letter is with respect to NY E83857 dated July 8, 1999, issued to you on behalf of Consolidated Stores, Inc., by the National Commodity Specialist Division, New York.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY E83857, as described below, was published in the CUSTOMS BULLETIN on January 17, 2001. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to that notice.

Facts:

In your letter of June 22, 1999, you requested the tariff classification of "6pc Handle Wedges" (#HDHO405AVA). Information submitted with your request indicates that the goods are as follows: "4pc small hammer wedges (5/16" x 13/16") suitable for hammer weight: 12 – 24 oz; 1pc sledge hammer wedge (1-1/2" x 1-1/2") suitable for hammer weight: 2 – 12 lb; 1pc axe wedge (1-3/16" x 1-3/4") suitable for axe weight: 3 – 6 lb." Your letter of June 22, 1999, states: "Function: Holds the hammer head and handle together."

In NY E83857 dated July 8, 1999, Customs determined that the goods were classified in subheading 8205.30.60, Harmonized Tariff Schedule of the United States ("HTSUS"), as: "Handtools ... not elsewhere specified or included ... : Planes, chisels, gouges and similar cutting tools for working wood, and parts thereof: ... Other (including parts)." We have reviewed that consideration and have deter-

mined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the tariff classification of the above-described hammer wedges and axe wedge?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8201	Handtools of the following kinds ... : ... axes ... :
8201.40	Axes ... and parts thereof:
8201.40.30	Machetes, and parts thereof
8201.40.60	Other

* * * *

8205	Handtools ... not elsewhere specified or included ...
8205.20	Hammers and sledge hammers, and parts thereof:
8205.20.30	With heads not over 1.5 kg each
8205.20.60	With heads over 1.5 kg each

* * * *

8205.30	Planes, chisels, gouges and similar cutting tools for working wood, and parts thereof:
8205.30.60	Other (including parts)

* * * *

	Other handtools ... and parts thereof:
8205.59	Other:
8205.59.30	Crowbars, track tools and wedges, and parts thereof

* * * *

Explanatory Note 82.05 (E) (5) provides:

> (E) Other hand tools ...
> This group includes:
>
> ...
> (5) Tools, for mining, road work, etc., such as crow bars, prizing levers, stone cutting chisels, punches and *wedges*. [Emphasis supplied.]

The New Encyclopedia Britannica (1993) defines "wedge" in pertinent part as follows: "in mechanics, device that tapers to a thin edge, usually made of metal or wood, and used for splitting, lifting, or tightening, *as to secure a hammer head onto its handle*." [Emphasis supplied.]

The National Commodity Specialist Division contacted the Hand Tools Institute ("HTI"), a trade association of North American manufacturers of non-powered hand tools to obtain information about the use of wedges. The HTI advised that wedges are used to connect the head of the hammer with the handle of the hammer; if the handle of the hammer begins to loosen, an additional wedge may be used to tighten the fit. This is consistent with the information provided with your ruling request to the effect that the function of the wedges is to hold the hammer head and handle together.

After a review of this matter, it is our determination that the wedges at issue here are not wedges within the meaning of subheading 8205.59.30, HTSUS. *See* EN 82.05 (E) (5), excerpted above. The wedges at issue here are not tools for mining or road work as described therein.

We further find that there is no basis for classifying the wedges in subheading 8205.30.60, HTSUS, *i.e.*, they are not planes, chisels, gouges or similar cutting tools for working wood, nor are they parts thereof.

Note 2 to Chapter 82, HTSUS, provides in pertinent part that parts of base metal of the articles of Chapter 82 are to be classified with the articles of which they are parts. As these wedges fit between the head of the tool and its handle, the terms of Note 2 are met. In addition, with respect to the issue as to whether the wedges are "parts," in *Clipper Belt Lacer Co., Inc. v. U.S.*, 14 CIT 146, 155 (1990), the court quoted from earlier cases:

> It is a well-established rule that a 'part' of an article is something necessary to the completion of that article. It is an integral, constituent, or component part, without which the article to which it is to be joined, could not *function as such article." United States v. Willoughby Camera Stores, Inc.*, 21 CCPA 322, 324, T.D. 46,851 (1933) (emphasis in original), *cert denied*, 292 U.S. 640 (1934) ... In determining whether an item is a part of an article, the Court looks to the "nature, function, and purpose of an item in relation to the article to which it is attached or designed to serve ..." *Ideal Toy Corp. v. United States*, 58 CCPA 9, 13, C.A.D. 996, 433 F. 2d 801, 803 (1979) ... [Additional citations omitted.] The rule set out in *Willoughby Camera* has been modified over the years so that a device may be a part of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. To meet this test, the device must be dedicated for use upon the article. *See Beacon Cycle*, 81 Cust. Ct. at 50–51, 458 F. Supp. at 816–17 ... [Additional citations omitted.]

Following this rationale, it is our determination that the hammer wedges are parts of hammers or sledge hammers and the axe wedges are parts of axes.

Accordingly, we determine that the hammer wedges are classified in subheading 8205.20, HTSUS, as parts for hammers or sledge hammers. If the wedges are for use with hammers or sledge hammers with heads not over 1.5 kg each, they are classified in subheading 8205.20.30, HTSUS. If the wedges are for use with hammers or sledge hammers with heads over 1.5 kg each, they are classified in subheading 8205.20.60, HTSUS.

The axe wedges are classified in subheading 8201.40.60, HTSUS as: "Handtools of the following kinds ... : ... Axes ... and parts thereof: ... Other."

Holdings:

Hammer wedges for use with hammers with heads not over 1.5 kg each are classified in subheading 8205.20.30, HTSUS, as: "Handtools ... not elsewhere specified or included ... : ... Hammers and sledge hammers, and parts thereof: With heads not over 1.5 kg each."

Hammer wedges for use with hammers with heads over 1.5 kg each are classified in subheading 8205.20.60, HTSUS, as: "Handtools ... not elsewhere specified or included ... : ... Hammers and sledge hammers, and parts thereof: ... With heads over 1.5 kg each."

Axe wedges are classified in subheading 8201.40.60, HTSUS as: "Handtools of the following kinds ... : ... Axes ... and parts thereof: ... Other."

Effect on other Rulings:

NY E83857 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF EFFERVESCENT BATH SALTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the classification of effervescent bath salts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking and modifying several ruling letters pertaining to the tariff classification of effervescent bath salts and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation and modification was published in the CUSTOMS BULLETIN of January 3, 2001, Vol. 35, No. 1. No comments were received.

EFFECTIVE DATE: These modifications and revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8,1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 3, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 1, proposing to revoke NY C85744, dated April 6, 1998, and HQ 950893, dated March 11, 1992, and modify NY E84228, dated, August 10, 1999, and NY E85194, dated August 11, 1999, pertaining to the tariff classification of effervescent bath salts. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in reply to these notices.

In all of these rulings, the classification of a product commonly referred to as effervescent bath salts was determined to be in heading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for perfumed bath salts and other bath preparations: other. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that classification is in error and that the product is properly classified in subheading 3307.30.10, HTSUS, which provides for perfumed bath salts and other bath preparations: bath salts, whether or not perfumed.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY C85744 and HQ 950893 and modifying NY E84228 and NY E85194 and any

other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 964670, 964631, 963260 and 964669 (*see* Attachments "A" through "D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposal notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 27, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

March 27, 2001
CLA-2 RR:CR:GC 964670ptl
Category: Classification
Tariff No. 3307.30.10

MR. AL ANDREWS
BATH & BODY WORKS
7 Limited Parkway East
Reynoldsburg, OH 43068

Re: Effervescent Bath Ball, NY C85744 revoked.

DEAR MR. ANDREWS:

Pursuant to your request of March 23, 1998, to the Director, National Commodity Specialist Division, New York Ruling Letter (NY) C85744 was issued on April 6, 1998, is which an article referred to as an effervescent bath ball, was classified in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of the effervescent bath ball therein is incorrect. Customs now believes the correct classification of the effervescent bath ball is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY C85744 was published on January 3, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 1. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notices.

Facts:

According to NY C85744, the product, an effervescent bath ball, sold in sizes ranging from 110 grams to 220 grams, is designed for use in the bathtub. The ingredients of the balls are: citric acid, sodium bicarbonate, sodium carbonate, propylene glycol, canola oil, fragrance, and colorants. The ball is designed to dissolve in 90°F water in 5 minutes or less.

Issue:

What is the classification of the effervescent bath ball?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other

perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

* * *

3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In NY C85744, Customs classified the effervescent bath ball in subheading 3307.30.50, HTSUS, in reliance on HQ 950893, dated March 11, 1992, which made the question of whether or not a bath product was effervescent the primary classification distinction between headings 3307.30.10 and 3307.30.50, HTSUS. Those products which effloresced (defined as: *Chem.* to change either throughout or on the surface to a mealy or powdery substance upon exposure to air, as a crystalline substance through loss of water of crystallization. *Random House Dictionary of the English Language*) were classified in heading 3307.30.10, HTSUS, as bath salts and those which effervesced (defined as: to give off bubbles of gas *Random House Dictionary of the English Language*) were classified in heading 3307.30.50, HTSUS, as other bath products. Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The *Random House Dictionary of the English Language* defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called "other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some

bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

The Effervescent Bath Ball is classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

NY C85744, dated April 6, 1998, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

March 27, 2001
CLA-2 RR:CR:GC 964631ptl
Category: Classification
Tariff No. 3307.30.10

MR. DAVID B. BROWN
POTTER, ANDERSON & CORROON
Delaware Trust Building
P.O. Box 951
Wilmington, DE 19899

Re: ActiBath Carbonated Bath Tablets, HQ 950893 revoked.

DEAR MR. BROWN:

On March 11, 1992, Customs issued HQ 950893 to you on behalf of your client, The Andrew Jergens Company, which classified an article known as ActiBath Carbonated Bath Tablets [ActiBath], in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of ActiBath therein is incorrect. Customs now believes the correct classification of ActiBath is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQ 950893 was published on January 3, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 1. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notices.

Facts:

According to HQ 950893, the product, ActiBath Carbonated Bath Tablets, comes in four versions: Spring Floral, Blue Forest, Moisture Treatment and Light & Fresh. It is marketed as the world's first carbonated bath tablet which provides therapy for the body and mind. The tablets are composed of either succinic or fumaric acid, sodium bicarbonate, sodium carbonate, Peg-150, fragrance, calcium silicate, cellulose gum, magnesium oxide, sucrose stearate and FD&C Blue 1. The moisture treatment Actibath is composed of succinic acid, dextrin, sodium bicarbonate, sodium carbonate, cetyl octanoate, titanium dioxide, isostearate, isostearic/myristic glycerides, polyquaternium-10, FD&C Blue No. 1, tocopherol. When exposed to water, the acid reacts with the sodium bicarbonate and sodium carbonate forming carbon dioxide gas.

Issue:

What is the classification of ActiBath Carbonated Bath Tablets?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	* * *
3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In HQ 950893, Customs classified ActiBath in subheading 3307.30.50, HTSUS, as other bath preparations rather than in subheading 3307.30.10, HTSUS, because of "its unique ability to release carbon dioxide when placed in water, resulting from the chemical reaction between succinic (or fumaric) acid and the sodium bicarbonate and sodium carbonate." Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The *Random House Dictionary of the English*

Language defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when succinic (or fumaric) acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called "other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

ActiBath Carbonated Bath Tablets are classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

HQ 950893, dated March 11, 1992, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

March 27, 2001
CLA-2 RR:CR:GC 963260ptl
Category: Classification
Tariff No. 3307.30.10

THOMAS J. MCCARTHY, ESQ.
LARS-ERIK HJELM, ESQ.
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 20036

Re.: Modification of NY E84228; Sparkling Herbal Bath Tablets.

DEAR MSSRS. MCCARTHY AND HJELM:

This is in response to your letter of October 29, 1999, on behalf of the Kneipp Corporation of America (Kneipp), requesting reconsideration of New York Ruling Letter (NY) E84228. NY E84228 was issued on August 10, 1999, to Kneipp's agent/broker and classified six different bath articles under the Harmonized Tariff Schedule of the United States (HTSUS). You are requesting reconsideration of NY E84228 insofar as it related to articles variously described as Sparkling Herbal Bath Tablets or Herbal Salt Bath Tablets. In NY E84228, the Melissa Sparkling Herbal Bath Tablet and the Juniper Sparkling Herbal Bath Tablet were classified in subheading 3307.30.50, HTSUS, which provides for perfumed bath salts and other bath preparations: other. You contend that the articles should be classified in subheading 3307.30.10, HTSUS, which provides for perfumed bath salts and other bath preparations: bath salts, whether or not perfumed. You have not requested reconsideration of the classification of the other four articles classified in NY E84228, and this letter does not address or affect those classifications.

In preparing this ruling, consideration has been given to your supplemental submission of November 15, 2000, and to the samples you have provided for examination.

We have determined that the classification of the sparkling herbal bath tablets provided by NY E84228 is incorrect. Pursuant to the analysis set forth below, the correct classification of sparkling herbal bath tablets is in subheading 3307.30.10, HTSUS.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E84228 was published on January 3, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 1. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notices.

Facts:

The articles under consideration are referred to in your presentation as "herbal salt bath tablets" although Kneipp refers to the articles, in both its product literature and labeling, as "sparkling herbal baths." Kneipp's literature describes the articles as "A special aroma-therapeutic treat. Effervescent tablets, activated by warm water, release aromatic essential oils to help renew mind and body." Each tablet weighs 3 ounces and is individually wrapped and labeled. The two versions of the tablets have slightly different formulae. According to the sample submitted, the ingredient list for the Juniper Sparkling Herbal Bath tablet is as follows: "Sodium Bicarbonate, Citric Acid, Nonfat Dry Milk, Fragrance, Soybean Oil, Corn Starch, Juniper Oil, Sodium Methyl Oleoyl Taurate, Silica, D&C Yellow No. 10." The "Juniper" label contains the statement: "To Soothe Tired, Sore Muscles". The ingredient list for the Melissa Sparkling Herbal Bath tablet is as follows: "Sodium Bicarbonate, Citric Acid, Nonfat Dry Milk, Citronella Oil, Soybean Oil, Corn Starch,

Balm Mint Extract, Fragrance, Sodium Methyl Oleoyl Taurate, Silica, FD&C Yellow No. 6, D&C Yellow No. 10." The "Melissa" label contains the statement: "Relaxing, For a Good Night's Sleep".

Issue:

What is the classification of herbal sparkling bath tablets?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	* * *
3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor a industry definition of what is meant by the term "bath salts." The *Random House Dictionary of the English Language* defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. The second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

A review of industry literature, materials and advertising indicates that products which are denominated "bath salts" are predominately composed of **crystals** of sea salts or other "natural" salts. Other sodium compounds and ingredients may also be present in varying concentrations. However, it is the salinity and "softness"

of the water (and its purported beneficial/luxurious quality) which results from using the various "bath salts" is repeatedly emphasized in the literature.

Your submission discusses HQ 950893, dated March 11, 1992, in which Customs classified a product, ActiBath Carbonated Bath Tablets, in subheading 3307.30.5000, HTSUS, as a product other than a bath salt because, among other reasons, it possessed the ability to release carbon dioxide when placed in water. You disagree with both the product analysis and classification result of HQ 950893. Customs has reviewed HQ 950893 and has determined that it erroneously classified the article. In a separate letter, being published simultaneously, Customs is revoking HQ 950893, and classifying the article as a bath salt (*See* HQ 964631).

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

Chemically, the sodium bicarbonate in the bath tablet preparation has a dual functionality; namely, to produce an attractive effervescence and to soften the water.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are described by their manufacturers are "bath salts" and those which are called "other bath preparations". These latter articles include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly. Kneipp's Herbal Bath Tablets fall within the category of bath salts.

Since the herbal bath tablets contain chemical salts and do, indeed, function as water softeners, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the products are properly considered bath salts and classifiable in subheading 3307.30.10, HTSUS.

Holding:

For the reasons stated above, the Kneipp Juniper Sparkling Herbal Bath Tablets and the Kneipp Melissa Sparkling Herbal Bath Tablets are classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]erfumed bath salts and other bath preparations.

NY E84228, dated August 10, 1999, is modified insofar as it relates to the products discussed in this letter. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

March 27, 2001
CLA-2 RR:CR:GC 964669ptl
Category: Classification
Tariff No. 3307.30.1000

Ms. Alice Liu
Atico International, Inc.
P.O. Box 14368
Fort Lauderdale, FL 33301

Re: Bath Fizzer, NY E85194 modified.

DEAR MS. LIU:

Pursuant to a request from Atico dated July 22, 1999, to the Director, National Commodity Specialist Division, New York Ruling Letter (NY) E85194, was issued August 11, 1999, in which the various components of an Aromatherapy Bath Gift Set (Item # CO8C0022) were classified. One article, referred to as a "bath fizzer", was classified in subheading 3307.30.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other bath preparations. We have reviewed that ruling and have determined that the classification of the bath fizzer therein is incorrect. Customs now believes the correct classification of the bath fizzer is in subheading 3307.30.10, HTSUS, pursuant to the analysis set forth below. This ruling does not affect the classification of the other articles classified in NY E85194.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E85194 was published on January 3, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 1. As explained in a notice published on February 21, 2001, in Vol. 35, No. 8 of the CUSTOMS BULLETIN, the period within which to submit comments on this proposal was extended to March 23, 2001. No comments were received in response to the notices.

Facts:

According to NY E85194, several articles were packaged in an Aromatherapy Gift Bath Set. Three different products; a foam bath, a cream bath and a bath fizzer were all classified in subheading 3307.30.50, HTSUS. This letter only addresses the product identified as a bath fizzer and which is composed of the following ingredients: sodium carbonate, sodium sulfate, citric acid, sodium bicarbonate, sodium chloride, mineral oil, colorant and fragrance.

Issue:

What is the classification of the bath fizzer?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	* * *
3307.30	Perfumed bath salts and other bath preparations:
3307.30.10	Bath salts, whether or not perfumed
3307.30.50	Other

In NY E85194, Customs classified the bath fizzer in subheading 3307.30.50, HTSUS, in reliance on HQ 950893, dated March 11, 1992, which made the question of whether or not a bath product was effervescent the primary classification distinction between headings 3307.30.10 and 3307.30.50, HTSUS. Those products which effloresced (defined as: *Chem.* to change either throughout or on the surface to a mealy or powdery substance upon exposure to air, as a crystalline substance through loss of water of crystallization. *Random House Dictionary of the English Language*) were classified in heading 3307.30.10, HTSUS, as bath salts and those which effervesced (defined as: to give off bubbles of gas *Random House Dictionary of the English Language*) were classified in heading 3307.30.50, HTSUS, as other bath products. Customs has reviewed this ruling and believes that the criteria used to distinguish between the two competing headings is incorrect.

Neither the HTSUS nor the ENs contain a definition of the term "bath salts." In absence of a definition of a term, the correct meaning is its common or commercial meaning. Unfortunately, according to the Cosmetic, Toiletry and Fragrance Association, there is neither an industry standard nor an industry definition of what is meant by the term "bath salts." The *Random House Dictionary of the English Language* defines "bath salts" as "a preparation used to soften or give a pleasant scent to a bath, as colored, sweet-smelling flakes, crystals, etc."

Hawley's *Condensed Chemical Dictionary* defines a salt as a compound formed when the hydrogen of an acid is replaced by a metal or its equivalent. The Kirk-Othmer *Encyclopedia of Chemical Technology*, Third Edition, 1979, contains the following entry under "Bath Salts"

> "Two types of bath salts are available. The first is formulated with crystalline salts such as rock salt and epsom salt to which color and perfume are added. These are not water softeners. he second type is the water softening type based on sesquicarbonates, phosphates, and borates. Color and perfume are added and in some products, small percentages of fatty acid ester are included for nondrying effects." Volume 7, at page 167.

Chemically, sodium carbonate and sodium bicarbonate have dual functionality in this bath salt preparation; namely, to produce an attractive effervescence and to soften the water.

As a general rule, acids react with carbonates and bicarbonates to produce carbon dioxide gas. In the instant case, when citric acid and sodium bicarbonate and sodium carbonate are placed in water the compounds dissolve and ionize. The resultant chemical reaction between the acid and the carbonate ions produces carbon dioxide gas, which results in effervescence at the surface of the water. In addition, if the water is hard, *i.e.*, contains high concentrations of calcium and magnesium ions, the carbonate ions will precipitate out calcium and magnesium carbonates, softening the water thereby.

The relevant commercial literature (advertising, promotional flyers, packaging and labeling) all make distinctions between products which are identified and described by their manufacturers are "bath salts" and those which can be called

"other bath preparations". These latter products include, among other examples, bath lotions, bath oils and bath powders. Conveniently, the tariff subheadings also divide products into two groups. Since the industry has seen fit to identify some bath products as "salts" and other products as something else, and absent language or definitions to the contrary in the tariff, Customs will classify the products accordingly.

Since this bath preparation does contain chemical salts and does, indeed, function as a water softener, and, given the fact that the release of carbon dioxide gas is purely esthetic and has no therapeutic effect, the product is a bath salt and is classifiable in subheading 3307.30.10, HTSUS.

Holding:

The bath fizzer is classified in subheading 3307.30.10, HTSUS, which provides for Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: Perfumed bath salts and other bath preparations: Bath salts, whether or not perfumed.

NY E85194, dated August 11, 1999, is modified in accordance with this letter. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF MILK CHOCOLATE SPRINKLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to the classification of milk chocolate sprinkles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of milk chocolate sprinkles and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of February 21, 2001, Vol. 35, No. 8. No comment was received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Gen-

eral Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8,1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on February 21, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 8, proposing to revoke New York Ruling Letter (NY) A81841, dated April 2, 1996, pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of milk chocolate sprinkles. No comment was received in reply to the notice.

In NY A81841, dated April 2, 1996, the classification of a product commonly referred to as milk chocolate sprinkles was determined to be in subheading 1806.90.9090, HTSUS, which provides for chocolate and other food preparations containing cocoa; other: other: other: other. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that classification is in error and that the product is properly classified in subheading 1806.90.0500, HTSUS, which provides for chocolate and other food preparations containing cocoa: other: other: other: other: Dairy products described in additional U.S. note 1 to chapter 4 ... described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the articles will be classified in subheading 1806.90.0800, HTSUS. In addition, articles classified in subheading 1806.90.0800, HTSUS, are subject to additional duties based on their value, as described in subheadings 9904.04.59 to 9904.04.66, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY A81841,

and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963271 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposal notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: March 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

March 26, 2001
CLA-2 RR:CR:GC 963271ptl
Category: Classification
Tariff No. 1806.90.05; 1806.90.08

MR. RICHARD CALLEBAUT
125 Larkspur Street
Suite 214
San Rafel, CA 94901

Re: Milk Chocolate Sprinkles, NY A81841 revoked.

DEAR MR. CALLEBAUT:

In New York Ruling Letter (NY) A81841, issued to you on April 2, 1996, by the Customs National Commodity Specialist Division in New York, a product described as milk chocolate sprinkles was classified under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 1806.90.9090, HTSUS, which provides for chocolate and other food preparations containing cocoa: other: other: other: other. We have reviewed that ruling and determined that the classification was in error. This letter revokes NY A81841 and provides the correct classification for the product as set forth below.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY 81841 was published on February 21, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 8. No comments were received in response to the notice.

Facts:

The product, identified as milk chocolate sprinkles, product reference code MALCHK-M, is stated to contain 50.5 percent maltitol, 16.1 percent cocoa butter, 15 percent full cream milk powder, 13.4 percent cocoa mass, 5 percent skimmed milk powder, and traces of vanilla. The total butterfat is 4.5 percent. The product is imported in either 1 or 5 kilogram bags and is used as a cake decoration.

Issue:

What is the classification of milk chocolate sprinkles which are imported in bulk for use as cake decoration?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS headings under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa
	* * *
1806.90	Other:
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
1806.90.0500	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions
	Other:

1806.90.0800	Containing less than 21 percent by weight of milk solids 1/
*	* *
1806.90.90	Other
*	* *
1806.90.9090	Other

1/ See Subheadings 9904.04.50—9904.05.01

The relevant U.S. Notes for these subheadings read as follows:

Additional U.S. Note 1 to Chapter 4:

1. For the purposes of this schedule, the term "dairy products described in additional U.S. note 1 to chapter 4" means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, *dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients* and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported. (Emphasis added)

Additional U.S. note 4 to chapter 4 provides, in relevant part:

(a) the term "capable of being processed or mixed with similar or other ingredients" means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or be blended or *combined with any additional ingredient*, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product; (Emphasis added)

The sprinkles contain two dairy ingredients: 15 percent full cream milk powder and 5 percent skimmed milk powder. The total butterfat content is 4.5 percent. Thus, based upon their ingredients, they fall within the definition of articles subject to the dairy quota. However, when NY A81841 was issued on April 2, 1996, Customs did not consider that the use of the articles as cake decorations constituted a "mixing with other ingredients" and thus excluded the articles from coverage of Additional U.S. Note 1 and the quota.

Since NY A81841 was issued, Customs has reviewed the subject of products used as cake decorations or toppings and the term "capable of being further processed or mixed with similar or other ingredients" as used in the Additional U.S. Notes.

Specifically, in HQ 960694, dated March 20, 1998, affirmed by HQ 963649, dated May 9, 2000, Customs stated:

> "It is undisputed that the toppings contain over 65 percent by dry weight of sugar and that they are not prepared for marketing to the ultimate consumer in the identical form and package in which they are imported (per Additional U.S. Note 2(d) of Section IV, HTSUS, the bakeries and food service establishments to which the products at issue will be sold are not "ultimate consumers"). The remaining issue, pursuant to Additional U.S. Note 2, is whether the toppings are "capable of being further processed or mixed with similar or other ingredients."

According to Section IV, Additional U.S. Note 2(b) "the term 'capable of being further processed or mixed with similar or other ingredients' means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or to be blended or combined with any additional ingredient, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product."

The word "ingredient" is not specifically defined in the tariff schedule. A tariff term that is not defined in the HTSUS or in the EN's is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). According to *Webster's Ninth New Collegiate Dictionary* (1991), the term "ingredient" is defined as "something that enters into a compound or is **a component part of any combination** or mixture." (Emphasis supplied). The toppings and the "untopped" donuts, pastries, or cakes are components combined to make finished goods. Therefore, we find that the toppings are capable of being combined with additional ingredients, to wit, donuts, pastries, or cakes.

Accordingly, we find that the toppings are subject to Additional U.S. Note 2. ..."

While HQ 960694 concerned the over 65 percent sugar quota, the definition of "capable of being further processed or mixed with similar or other ingredients" in Section IV, Additional U.S. Note 2(b), is the same as the definition of "capable of being further processed or mixed with similar or other ingredients" used for dairy quotas in Additional U.S. Note 4(a) to Chapter 4.

Based upon this reasoning, the chocolate sprinkles are "combined" with the products they are used to decorate and should be subject to the dairy quotas.

Holding:

The chocolate sprinkles, product reference code MAL-CHK-M, are classified under subheading 1806.90.0500, HTSUS, which provides for Chocolate and other food preparations containing cocoa: other: other: other: Diary products described in additional U.S. note 1 to chapter 4, described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the classification will be in subheading 1806.90.0800, HTSUS. In addition, products classified in subheading 1806.90.0800, HTSUS, are subject to additional duties based on their value, as described in subheadings 9904.04.50 – 9904.05.01, HTSUS.

NY A81841, dated April 2, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

James L. Watson
Herbert N. Maletz
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg*

Clerk

Leo M. Gordon

* Effective April 1, 2001.

Decisions of the United States Court of International Trade

(Slip Op. 01–32)

ARTHUR L. FRANKLIN D/B/A HEALTH TECHNOLOGIES NETWORK, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 99–05–00283

[Plaintiff's motion for summary judgment denied. Defendant's motion for summary judgment granted. Judgment entered for Defendant.]

(Decided March 28, 2001)

Vandeventer Black LLP (*Mark T. Coberly*), for Plaintiff.

Stuart E. Shiffer, Acting Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, *Aimee Lee*, Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice; *Beth C. Brotman*, Office of Assistant Chief Counsel, International Trade Litigation, U.S. Customs Service, Of Counsel, for Defendant.

OPINION

POGUE, *Judge:* Plaintiff, Arthur L. Franklin d/b/a/ Health Technologies Network ("Arthur Franklin"), challenges a decision of the United States Customs Service ("Customs") denying Arthur Franklin's protests filed in accordance with section 514 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1514 (1994). At issue is the proper tariff classification under 19 U.S.C. § 1202, Harmonized Tariff Schedule of the United States ("HTSUS"), of Arthur Franklin's imports of coral sand packets marketed under the names "Ericssons Alka-Mine Coral Calcium" and "Alka-Line Coral Calcium," and identified as, respectively, "GRANULES OF NATURAL CORAL, Additive for Healthy Water," *see* Def.'s Ex. D, and "NATURAL MINERAL FOOD SUPPLEMENT, Additive for Healthy Water," *see* Def.'s Ex. J.

Arthur Franklin claims that the subject merchandise is classifiable under subheading 8421.21.00, HTSUS, covering "Filtering or purifying machinery and apparatus for liquids: For filtering or purifying water." Goods classifiable under subheading 8421.21.00 were subject to duty rates of 3.1% (1995), 2.3% (1996) and 1.6% (1997), *ad valorem*,

for the years in which the subject merchandise was entered at the port of Norfolk, Virginia. Alternatively, Arthur Franklin claims classification under subheading 0508.00.00, HTSUS, as "Coral and similar materials, unworked or simply prepared but not otherwise worked . . . ." Goods classifiable under 0508.00.00 were allowed to be entered duty free from 1995 to 1997.[1]

Customs classified the merchandise under a residual or "basket" provision, subheading 2106.90.99, HTSUS, covering "Food preparations not elsewhere specified or included: Other . . . ." Goods classifiable under subheading 2106.90.99 were subject to duty rates of 9.4% (1995), 8.8% (1996) and 8.2% (1997), *ad valorem*. Arthur Franklin protested Customs' classification and, in response, Customs issued Headquarters Ruling 962059 (Oct. 21, 1998). Arthur Franklin asks the Court to overturn Customs' Ruling and classify its merchandise under subheading 8421.21.00, or, in the alternative, subheading 0508.00.00.

STANDARD OF REVIEW

Jurisdiction is predicated on 28 U.S.C. § 1581(a); therefore, Customs' classification is subject to *de novo* review pursuant to 28 U.S.C. § 2640. Following the Federal Circuit's holding in *Mead Corp. v. United States*, 185 F.3d 1304, 1306–07 (Fed. Cir. 1999), *cert. granted*, 120 S.Ct. 2193 (2000), the Court does not afford the deference articulated in *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842–43 (1984), to Customs' standard classification rulings. Moreover, although there is a statutory presumption of correctness that attaches to Customs' classification decisions, *see* 28 U.S.C. § 2639(a)(1), that presumption is not relevant where the Court is presented with a question of law in a proper motion for summary judgment, *see Universal Elecs. v. United States*, 112 F.3d 488, 492 (Fed. Cir. 1997).

This action is before the Court on summary judgment motions made by Arthur Franklin and Defendant, the United States, pursuant to USCIT Rule 56. Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." USCIT R. 56(c). A dispute is genuine "if the evidence is such that [the trier of fact] could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1985).

The court resolves any doubt over material factual issues in favor of the nonmoving party, and draws all reasonable inferences in its favor. *See Anderson*, 477 U.S. at 255; *Mingus Constructors, Inc. v.*

---

[1] In the Complaint, Arthur Franklin also maintained that classification is proper under subheading 2509.00.20, HTSUS, as "Chalk: Other," which carried a rate of duty of 1.1% (1995), 0.8% (1996), and 0.6% (1997). *See* Complaint at ¶ 20. In a subsequent filing, however, Arthur Franklin conceded that the merchandise is not properly classifiable under this subheading. *See* Pl.'s Mem. Opp. Def.'s Mot. Summ. J. ("Pl.'s Mem.") at 13.

United States, 812 F.2d 1387, 1390–91 (Fed. Cir. 1987). Nevertheless, "[w]hen a motion for summary judgment is made and supported . . . an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." USCIT R. 56(e).

Here, the parties agree that the imported merchandise is coral sand, to which a small amount of L-ascorbic acid has been added, and which has been packaged in one gram fiber bags. *See* Pl.'s Stmt. Undisputed Material Facts and Addition to Def.'s Stmt. Undisputed Material Facts at ("Pl.'s Stmt.") ¶¶ 2–4; Def.'s Stmt. Undisputed Material Facts ("Def.'s Stmt.") at ¶¶ 2–4; Def.'s Resp. Pl.'s Stmt. ("Def.'s Resp. Stmt.") at ¶ 4. Moreover, the parties agree that the effect of the merchandise is to increase the hardness and alkalinity of water, as well as to reduce bacteria and chlorine present in water.[2] *See* Pl.'s Stmt. at ¶¶ 7–11; Def.'s Stmt. at ¶¶ 7–11; Def.'s Resp. Stmt. at ¶¶ 7–11. Although the parties disagree as to the "principal use" of the merchandise, *see* Pl.'s Mem. at 12, Def.'s Mem. Supp. Mot. Summ. J. ("Def.'s Mem.") at 5, Pl.'s Reply Mem. Supp. Pl.'s Mot. Summ. J. ("Pl.'s Reply") at 5, Arthur Franklin has failed to set forth specific facts showing that this is a genuine issue for trial. *See* discussion *infra* Part I. Summary judgment is therefore appropriate.

The Court's analysis of a Customs classification issue proceeds in two steps: "first, [it] construe[s] the relevant classification headings; and second, [it] determine[s] under which of the properly construed tariff terms the merchandise at issue falls." *Bausch & Lomb*, 148 F.3d at 1365 (citing *Universal Electronics*, 112 F.3d at 491). While the first step is a question of law and the second step is a question of fact, *see Orlando Food Corp. v. United States*, 140 F.3d 1437, 1439 (Fed. Cir. 1998), whether the imported merchandise is properly classified is ultimately a question of law. *See Bausch & Lomb*, 148 F. 3d at 1365.

The Parties' Positions

Arthur Franklin argues that the imported merchandise is an apparatus for filtering or purifying liquids, and therefore classifiable under subheading 8421.21.00. *See* Pl.'s Mem. at 8–12. Upon placing the merchandise in a specified amount of water, the calcium carbonate in the coral increases the hardness (*i.e.*, the amount of calcium carbonate), and thereby raises the alkalinity (*i.e.*, the pH level) of the water. *See id.* at 9. The increase in alkalinity has the effect of killing bacteria present in the water. *See id.* Further, L-ascorbic acid, which is added to the coral sand, reacts with and neutralizes chlorine in the water. *See id.* at 2. Alternatively, Arthur Franklin claims that the addition of L-ascorbic acid does not take the merchandise outside of subheading 0508.00.00, which covers "unworked" or "simply prepared"

---

[2] Summary judgment of a classification issue is appropriate "when there is no genuine dispute as to the underlying factual issue of exactly what the merchandise is." *Bausch & Lomb v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998).

coral. *See id.* at 12–13.

The United States responds that the merchandise adds rather than removes elements from water; as such, the merchandise does not function as a device for filtering or purifying for classification purposes. *See* Def.'s Mem. at 5. In any event, argues the United States, "the primary purpose of the imported substance is to increase the mineral content (hardness) and alkalinity (pH) of water through the addition of elements, and not to purify water." *Id.* Furthermore, the United States asserts that the merchandise is not classifiable under subheading 0508.00.00 because of the addition of L-ascorbic acid, and because the Chapter Notes preclude classification under chapter 0508 of goods that are ingested. *See id.* at 5–6. From its contention that the merchandise is similar to other products classified under subheading 2160.90.00, the United States concludes that Customs' classification of the merchandise as "other" food preparations under the basket provision of subheading 2106.90.99 was correct. *See id.* at 4–5.

DISCUSSION

Orlando Foods requires us first "to determine whether the product at issue is classifiable under the heading."[3] *Orlando Foods*, 140 F.3d at 1440. If the merchandise is classifiable under more than one heading, "The heading which provides the most specific description shall be preferred to headings providing a more general description." GRI 3(a), HTSUS; *see also Orlando Foods*, 140 F.3d at 1440. The precise issue before the Court, then, is whether the subject merchandise is properly classified under any of the headings suggested by the parties. Because we find that the merchandise is classifiable under only one of the suggested headings, there is no relative specificity issue.

I. *Whether the subject merchandise is a filtering or purifying device*

This court has previously construed the tariff terms "filter" and "purify." In *Noss Co. v. United States*, 7 CIT 111, 588 F. Supp. 1408 (1984), *aff'd* 753 F.2d 1052 (Fed. Cir. 1985), the court cited several lexicographic definitions of "purify" in analyzing heading 661, TSUS, which was replaced without any relevant change by heading 8421 in the HTSUS:

> [T]o make pure: as to clear from material defilement or imperfection; free from impurities or noxious matter * * *. *Webster's Third New International Dictionary* (1981).

---

[3] General Rule of Interpretation ("GRI") 1 for the HTSUS provides that, "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes . . . ." GRI 1, HTSUS. *See also* Harmonized Commodity Description and Coding System, Explanatory Notes (2nd ed. 1996)("Explanatory Notes"), at GR 1(V) ("[T]he terms of the headings and any relative Section or Chapter Notes are paramount, *i.e.*, they are the first consideration in determining classification."). The Explanatory Notes "provide a commentary on the scope of each heading of the Harmonized [Tariff] System and are thus useful in ascertaining the classification of merchandise under the system." H.R. Conf. Rep. No. 100–576, at 549 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582. It has long been settled that, "[w]hile the Explanatory Notes do not constitute controlling legislative history, they do offer guidance in interpreting HTS[US] subheadings." Lonza, Inc. v. United States, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

> To free from admixture with foreign or vitiating elements; make clear or pure * * *. *Funk & Wagnalls New Standard Dictionary of the English Language* (1941).
>
> [T]o remove unwanted constituents from a substance. *McGraw-Hill Dictionary of Scientific and Technical Terms* (2d ed. 1978).

Noss, 7 CIT at 115–16, 588 F. Supp. at 1412. The court noted that "purify" and "filter" may be used synonymously. *Id.* at 116, n.4, 588 F. Supp. at 1412, n.4. In *Deringer v. United States*, 10 CIT 798, 800, 656 F. Supp. 670, 671–72 (1986), *aff'd* 832 F.2d 592 (Fed. Cir. 1987), the court adopted the *Noss* court's definitions, and we follow suit here.

Given this construal of the terms "filter" and "purify," the merchandise purifies insofar as the addition of hardness[4] raises the alkalinity level of water, and thereby reduces bacteria, and insofar as the L-ascorbic acid neutralizes chlorine. Bacteria and chlorine are recognized as impurities when present in water. *See* HQ 953683 (Apr. 5, 1993)(classifying water treatment units under heading 8421, in part, because the units inhibit bacteria growth and remove chlorine odor in water); *see also* 19 *McGraw Hill Encyclopedia of Science and Technology* 387 (8th ed. 1997)(defining "water treatment" as "[p]hysical and chemical processes for making water suitable for human consumption and other purposes. Drinking water must be bacteriologically safe, free from toxic or harmful chemical [sic] or substances, and comparatively free of turbidity, color, and taste-producing substances.").[5]

Insofar as the addition of hardness raises the alkalinity level of water, and thereby benefits the health of the consumer in ways other than those associated with the reduction of bacteria, however, the merchandise does not purify or filter in the sense required under heading 8421. Rather, the merchandise has more than one use, in that it partly serves to purify water and partly serves to make water otherwise "healthier" for the consumer. Arthur Franklin's marketing materials emphasize that water of a higher alkalinity may bring health benefits to the user, because the human diet generally tends to pro-

---

[4] Of course, "hardness" is itself considered an impurity in water; the Explanatory Notes to heading 8421 provide specifically for water softeners. *See* Explanatory Notes at 84.21(II)(A) ("Filtering and purifying machinery, etc., for liquids, including water softeners."). This notwithstanding, Arthur Franklin asserts that the merchandise is similar to the chemical water purifiers provided for in the Explanatory Notes, which include permutite or zeolite softeners. *See* Pl.'s Mem. at 5–7, 9–10; Explanatory Notes at 84.21(II)(A)(8). Even if the merchandise works by chemical reaction, however, "chemical water purifiers," just as all other kinds of purifiers, must be chiefly used to purify to be classifiable under heading 8421. The subject merchandise is not chiefly used to purify. *See* discussion *infra*.

[5] Arthur Franklin points out that heading 8421 has been construed to include devices that "treat" water. *See* Pl.'s Mem. at 5–8, 10–11. The term "treatment," however, has been used in a way consistent with the definitions of "purify" and "filter" given above. *See* NY 889108 (Sept. 2, 1993)(classifying water treatment units under 8421.21.00 because "[t]he systems are based on treating water with ozone to remove impurities and deionize it"). In some of these rulings, "treatment" has been used to describe a process that neither adds nor removes elements from the water, yet effectively deals with an impurity in the water. *See* NY A84906 (June 28, 1996)(classifying water treatment unit that used magnets to control hard water deposits under subheading 8421.21.00); NY 894074 (Feb. 7, 1994)(same). Thus, while Arthur Franklin may urge a broader interpretation of the terms "purify" and "filter" than that forwarded by the United States, which focuses on the physical removal of impure elements, Arthur Franklin may not argue that use of the word "treatment" expands the scope of the heading beyond its terms, which specify devices that "filter" or "purify." *See* GRI 1.

duce a sub-optimal acidity level in the body. *See* Def.'s Ex. E (claiming, for example, that "[c]oral calcium turns water alkaline for healthy pH balance in the body"). Notwithstanding these claims, there is no evidence to indicate that the pH level of "good" water[6] is an "imperfection," or in any other way an "unwanted constituent" of the water itself, in the same way that bacteria or chlorine is.

Heading 8421 is a "use" provision, which, under the HTSUS, means "principal use." *See Deringer*, 10 CIT at 801, 656 F. Supp. at 672; *Pharmacia Fine Chemicals, Inc. v. United States*, 9 CIT 438, 439 (1985)(citing *Noss*, 7 CIT at 116, 588 F. Supp. at 1412); *see also* Additional U.S. Rule of Interpretation 1(a) ("[A] tariff classification controlled by use . . . is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation . . . and the controlling use is the principal use."). In short, the merchandise must be "chiefly used" to filter or purify in order to be classified under heading 8421. *Pharmacia*, 9 CIT at 439. Plaintiff has provided no evidence from which an inference could be drawn that the chief use of the subject merchandise is to purify.

In this case, the marketing materials presented as exhibits to the record, and cited extensively by both parties, defy Arthur Franklin's bald assertion that the chief use of the merchandise is to purify.[7] *See* Pl.'s Mem. at 5; Pl.'s Reply at 5. Rather, the marketing materials place primary emphasis on the ability of the merchandise to benefit the general health of the consumer in ways unrelated to the specific ability of the merchandise to purify.[8] *See, e.g.*, Def.'s Ex. E (emphasizing positive effects of merchandise on longevity and general health, claiming "Never has a natural product done more for your health!"; the headline on page 2 of the exhibit reads "Attention Your Health is at Stake!"); Def.'s Ex. J (label on packaging indicates product is a "Natural Mineral Food Supplement: Additive For Healthy Water").

The marketing materials do use the words "purify" and "filter" in various forms. The descriptions of the merchandise's ability to "filter" and "purify" are, however, vague, and in any event do not comport with Arthur Franklin's argument in this litigation that the merchandise "purifies" because it reduces the presence of bacteria. *See* Pl.'s Reply at 1–2. In one piece of marketing literature, called "The Coral Calcium Story," the merchandise is alleged to have a "unique

---

[6] Since the instructions specify "good" water, and suggest the use of bottled or distilled water, this merchandise is apparently not designed to remedy overly acidic water. *See* Def.'s Ex. J.

[7] "It is well established in customs law that although descriptions contained in service manuals and marketing literature 'are not conclusive, they are relevant evidence of industry usage, particularly when they contradict the plaintiff's present position in [the] litigation.'" *Lloyds Elecs., Inc. v. United States*, 15 CIT 164, 168 (1991)(citing *NEC America, Inc. v. United States*, 8 CIT 184, 190, 596 F. Supp. 466, 471 (1984), *aff'd*, 760 F.2d 1295 (Fed. Cir. 1985))(brackets in original).

[8] Arthur Franklin argues that "the health benefits claimed are only the benefits one gets from drinking purified water in which acidity and chlorine have been reduced." Pl.'s Reply at 4. Drinking purified water does contribute to good health, but, as explained above, "reducing acidity" is not purification for classification purposes.

purification quality" and to "allow[] spontaneous filtration of the liquid," yet nowhere is the reduction of bacteria discussed.[9] Def.'s Ex. E. In a second piece of marketing literature, it is maintained that "a filtering and purifying process . . . assists the body in developing and maintaining a proper pH balance." *Id.* It is, however, the increase in alkalinity *per se*, not the killing of bacteria resulting from the increase in alkalinity, that would affect the body's pH level.[10]

The marketing materials do make plain that one purpose of the merchandise is to reduce chlorine in water. *Id.* And, as noted above, the merchandise in fact purifies in that it kills bacteria. This evidence notwithstanding, Arthur Franklin has failed to set forth specific facts showing that the principal use of the merchandise is a genuine issue for trial. Plaintiff lays no factual basis from which we could draw a reasonable inference in opposition to the conclusion that the principal use of the imported merchandise is to function as a health supplement, rather than as a water purifier, as that term is understood for classification purposes. The emphasis given in the marketing materials to general health claims negates Arthur Franklin's claim in litigation that the merchandise is chiefly used to purify. Consequently, the merchandise is not properly classifiable under heading 8421.

II. *Whether the subject merchandise is "unworked" or "simply prepared" coral*

Arthur Franklin claims that the merchandise may alternatively be classified under heading 0508, which covers "Coral and similar materials, unworked or simply prepared but not otherwise worked . . . ." The Explanatory Notes indicate that "unworked" coral is coral "from which only the outer crust has been removed." Explanatory Notes at 05.08(1). "Simply prepared" coral is coral "not having undergone processes extending beyond simple cutting." *Id.* at 05.08(2).

It appears from the record that the merchandise is mined as sand, rather than mined as pieces of coral that are later ground into sand.[11] *See* Pl.'s Interrogatory Answers 6(a)(b); Pl.'s Mem. at 1. Assuming it

---

[9] Interestingly, the only reference to bacteria is in the material describing Alka-Line Coral Calcium Gold, merchandise not at issue here, which "contains minute traces of silver bonded to the coral granules helping to eliminate bad bacteria." Def.'s Ex. E.

[10] It is also asserted that the merchandise "purifies the water just as it does [sic] in cleaning up the toxins from the ocean," and later that, "[t]he purified liquid becomes a proper environment for the body to process nutrients and dispose of toxins, free radicals and other waste products." *See* Def.'s Ex. E. To the extent this suggests that the merchandise purifies by removing toxins other than bacteria and chlorine from the water, such a claim is simply not supported by the laboratory reports stipulated to by the parties. *See* Def.'s Ex. G, H. To the extent that it is suggested that the "purified" water helps the body flush out toxins, these claims have to do with general health rather than with effect of the merchandise on the water.

[11] The record is somewhat unclear on this point. In its memorandum, the merchandise is described as "ground (dead) coral, commonly referred to as coral sand." Pl.'s Mem. at 1. In Interrogatory Answer 6(a)(b), which describes the production process of the merchandise, Arthur Franklin refers only to "coral." *See* Pl.'s Interrogatory Answer 6(a)(b). There is, however, no reference in 6(a)(b) to any industrial grinding process. *See id.* The United States notes that "the product here is of a powder consistency, suggesting more processing of the original coral," Def.'s Opp. Pl.'s Cross-Mot. Summ. J. at 16; such additional processing, however, cannot be confirmed on this record. The lack of clarity on this factual point does not preclude summary judgment because, as the analysis will show, heading 0508 does not apply in any case.

is mined as sand, we agree with the United States that the addition of L-ascorbic acid takes the subject merchandise outside the scope of "simply prepared" coral.[12] In Headquarters Ruling 223538, the "calcium sand" was found to be "simply prepared" because the preparation process involved only grading and treatment with chemicals to kill bacteria present on the coral and shells. *See* HQ 223538 (Oct. 1, 1992). Rather than merely eliminating impurities present on the coral, the L-ascorbic acid adds an additional feature to the finished product, insofar as the merchandise functions to remove chlorine from water – a function not performed by coral sand acting alone. The "simple cutting" proposed by the Explanatory Notes as the limit of what may be considered "simply prepared" coral would not, under any common sense view, stretch to include a process that augments the natural capabilities of the coral.

Assuming, on the other hand, that the merchandise is mined as pieces of coral that are subsequently ground into sand using an industrial process, the merchandise could not be called "simply prepared." "Simple cutting" has been used to refer to wire cut to size for use in a particular application, *see Samsonite Corp. v. United States*, 12 CIT 1146, 1148, 702 F. Supp. 908, 910 (1988), *aff'd* 889 F.2d 1074 (Fed. Cir. 1989)(citing *General Instrument Corp. v. United States*, 462 F.2d 1156 (CCPA 1972)). Grinding of the coral would clearly entail more processing than mere cutting to size, or than the "grading" referred to in Headquarters Ruling 223538 that separated out a certain size of particle for use as "calcium sand," but involved no cutting or grinding. *See* HQ 223538 (Oct. 1, 1992); *see also* 6 *Oxford English Dictionary* 846 (2d ed. 1989)(defining "grind" as, "[t]o reduce to small particles or powder by crushing * * * "); 4 *Oxford English Dictionary* 172 (defining "cut" as, "[t]o divide into two or more parts * * * "). Thus, under either factual scenario, the merchandise is not classifiable under heading 0508.

III. *Whether Customs correctly classified the subject merchandise under heading 2106 as "other" food preparations*

The tariff term "preparation" was construed in *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (1994):

> The term "preparation" has been defined as "something that is prepared: something made, equipped, or compounded for a specific purpose * * *." *Webster's Third New International Dictionary* 1790 (unabridged 1993) . . . . The *Oxford English Dictionary* defines "preparation" as a "substance specially prepared, or made up for its appropriate use or application, *e.g.* as food or medicine * * *." 12 *Oxford English Dictionary* 374 (1989). And in *United States v. P. John Hanrahan, Inc.*, 45 CCPA 120, C.A.D. 684 (1958),

---

[12] The merchandise cannot be considered "unworked" because some degree of processing or preparation is admitted. *See* Pl.'s Interrogatory Answer 6(a)(b).

> the court elaborated upon what constitutes a "preparation" in its analysis of the tariff term "edible preparation." The *Hanrahan* court stated that "where the imported merchandise is a distinct and recognized article of commerce, having an individual name, and which is produced from a raw material by a definite series of steps, said merchandise is a preparation." *Id.* at 122.

Nestle Refrigerated Food, 18 CIT at 673–74.

The subject merchandise falls squarely within the definition of "preparation." The raw material of coral sand is processed by a definite series of steps, including washing, drying, treating with L-ascorbic acid, and packaging in one gram fiber bags; further, the merchandise is specifically made to treat drinking water. *See* Pl.'s Interrogatory Answers 6(a)(b); Pl.'s St. at ¶ 6; Def.'s St. at ¶ 6. Moreover, because the merchandise adds to and affects the properties of water that is ultimately consumed, it may properly be considered a "food preparation." *See* 6 Oxford English Dictionary 8 ("food" is that which "is taken into the system to maintain life and growth, and to supply the waste of tissue * * *"). Finally, Explanatory Note 21.06(A) makes clear that the heading covers all "[p]reparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption." Explanatory Notes at 21.06(A). In this case, water is consumed after the merchandise is allowed to steep in the water, a process that is similar to the dissolving process specified in the Explanatory Note. Thus, both the terms of the heading and the Explanatory Notes support our conclusion that the merchandise is classifiable under heading 2106.[13]

Within heading 2106, Customs classified the merchandise under subheading 2106.90.99, a "basket" provision covering "Food preparations not elsewhere specified or included: Other . . . .". Classification in a basket provision is only appropriate if there is no subheading

---

[13] As further support for its argument that classification under heading 2106 is proper, the United States points to Explanatory Note 21.06(14). This Explanatory Note provides for the inclusion of:

> Products consisting of a mixture of plants or parts of plants . . . which are not consumed as such, but which are of a kind used for making herbal infusions or herbal "teas" . . . including products which are claimed to offer relief from ailments or contribute to general health and well-being.

Explanatory Notes at 21.06(14). The United States asserts that, "Like a tea or infusion, the imported substance is placed in water which results in the addition of certain elements that are then consumed when the water is drunk." Def.'s Mem. at 7.

We agree that Explanatory Note 21.06(14) may be viewed as supportive of classification under heading 2106, despite the fact that coral is not a plant, but an animal. *See* 3 *The New Encyclopedia Britannica* (Micropaedia) 618 (15th ed. 1986)(coral is "any of a variety of invertebrate marine organisms of the class Anthozoa (phylum Cnidaria)"). The term "infusion" is not limited to plant products, and describes the use of the merchandise at issue. The *Oxford English Dictionary* defines "infusion," as, "The process of pouring water over a substance, or steeping the substance in water, in order to impregnate the liquid with its properties or virtues." 7 *Oxford English Dictionary* 953. It defines "infuse" as, "To steep or drench (a plant, etc.) in a liquid, so as to extract its soluble properties * * * To affect or act upon (a liquid) by steeping some soluble substance in it * * *." *Id.*

Here, it is undisputed that the coral sand is somewhat soluble, with the result that, upon steeping for a specified amount of time, hardness and alkalinity are added to the water. *See* Pl.'s Stmt. at ¶¶ 8–10; Def.'s Stmt. at ¶¶ 8–10; Def.'s Ex. F, G. Moreover, to the extent that the L-ascorbic acid added to the coral sand removes or reduces chlorine in the water, the merchandise may be said to "affect or act upon" the water in this way as well. *See* Pl.'s Stmt. at ¶ 11; Def.'s Stmt. at ¶ 11; Def.'s Ex. H. Thus, the merchandise is accurately described as an "infusion." Explanatory Note 21.06(14) may also support classification under heading 2106 because, as detailed above, the merchandise claims to contribute to general health. *See* discussion *infra* Part I.

within the heading that covers the merchandise more specifically. *See EM Indus. v. United States*, 22 CIT , __, 999 F. Supp. 1473, 1480 (1998)("'Basket' or residual provisions of HTSUS Headings . . . are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading."). A survey of the subheadings of heading 2106 reveals that there is no other subheading that is more specific; other subheadings, for example, cover protein concentrates, dried dairy products, butter substitutes, certain kinds of syrups, and fruit or vegetable juices. Therefore, "[a]bsent a more apt subheading," we conclude that Customs correctly classified the subject merchandise under subheading 2106.90.99. *Orlando Foods*, 140 F.3d at 1442.

CONCLUSION

For the foregoing reasons, the Court holds that Customs correctly classified Arthur Franklin's imported merchandise under subheading 2106.90.99, HTSUS. Accordingly, Arthur Franklin's motion for summary judgment is denied. In turn, the United States' motion for summary judgment is granted and judgment is entered for the United States.

(Slip Op. 01–33)

WASHINGTON INTERNATIONAL INSURANCE CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

UNITED STATES, PLAINTIFF *v.* WASHINGTON INTERNATIONAL INSURANCE CO., DEFENDANT

Consolidated Court No. 92–11–00720

[The United States' motion to dismiss CIT No. 92-11-00720 is granted in part and denied in part. Washington International Insurance Company's motion for summary judgment in CIT No. 92-11-00720 is denied. The United States' cross-motion for summary judgment in CIT No. 92-11-00720 is denied. Washington International Insurance Company's motion to for summary judgment in CIT No. 96-10-02466 is denied. The United States' motion for summary judgment in CIT No. 96-10-02466 is granted. Pursuant to CIT R. 54(b) final judgment is entered in favor of the United States on its complaint in CIT No. 96-10-02466.]

Sandler, Travis & Rosenberg (*Kenneth Wolf*), New York, NY, for Plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General of the United States; *Joseph I. Liebman*, Attorney-in-Charge, International Trade Field Office, *Mikki Graves Walser*, Commercial Litigation Branch, Civil Division, United States Department of Justice, for Defendant.

(Dated March 28, 2001)

OPINION

CARMAN, *Chief Judge:* The consolidated action before this Court consists of two cases, *Washington International Insurance Co. v. United States*, CIT No. 92-11-00720, and *United States v. Washington International Insurance Co.*, CIT No. 96-10-02466. At issue are forty-one bonded entries of antifriction bearings that were imported by General Bearing Corporation (General Bearing/Principal)[1] into the United States between November 1988 and April 1990 subject to the terms of a 1988 antidumping duty order. Eleven of the forty-one entries are the subject of Washington International Insurance Company's (Washington International) complaint in CIT No. 92-11-00720.[2] The remaining thirty entries are the subject of litigation in the United States' suit, CIT No. 96-10-02466. For ease of reference, the entries cited in CIT No. 92-11-00720 are referred to as the "Group I"[3] entries and the entries cited in CIT No. 96-10-02466 are referred to as the "Group II"[4] entries.

The events leading to and the legal claims underlying this consolidated action are unquestionably convoluted. Familiarity with the factual background is necessary to understand the parties' allegations. Accordingly, the following section provides a detailed discussion of events that precipitated this case. To provide clarity, the facts are divided into three sections, each corresponding to a specific series of events. The facts are undisputed, have been stipulated to by the parties, and are applicable to each of the motions discussed below.[5]

BACKGROUND

A. *The Antidumping Determination, Entry, and Liquidation of the Merchandise at Issue*

On November 9, 1988, the United States Department of Commerce (Commerce) published a preliminary determination that antifriction bearings from Japan were being sold at less than fair value. *See Pre-*

---

[1] General Bearing Corporation is a domestic importer of various bearings. Washington International, the plaintiff and defendant in this consolidated action, was engaged by General Bearing to act as a surety for its imports of the merchandise at issue in this case.

[2] Washington International originally cited thirteen entries in its complaint. Subsequently, however, Washington International abandoned its claim on Entry No. C150-008351-9. Additionally, Washington International admits that the Entry No. C15-0008332-9 was not reliquidated and all duties demanded on this entry were not paid at the time CIT No. 92-11-00720 was filed. Apparently, interest in the amount of $698.58 remains due on this entry. Because all duties on this entry were not paid at the time CIT No. 92-11-00720 was filed, Washington International failed to satisfy the jurisdictional requirements of 28 U.S.C. § 2637(a) which provides: "A civil action contesting denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced...." This entry is, therefore, not properly before the Court and will not be considered as part of the Group I entries.

[3] The Group I entries are: C150009794-9; C150008303-0; C150008312-1; C150008318-8; C150008321-2; C150008342-8; C150008357-6; C150008363-4; C150008362-6; C150008375-8; C150008380-8.

[4] The Group II entries are as follows: 419-01557482; 419-01569289; 419-01570352; 419-01597181; 419-01594873; 419-0159445-0; C15-00083352; C15-00097915; C15-00097956; C15-00097857; C15-00083550; C15-00083253; C15-00083477; C15-00083527; C15-00097899; C15 00083568; C15-00083600; C15-00083279; C15-00083220; C15-00083147; C15-00083261; C15-00083766; C15-00083139; C1500083071; C15-00097824; C15-00097808; C15-00083725; 419-15913333; C15-00083329; C15-00083832.

[5] Based upon the papers submitted to the Court, a factual timeline was constructed for review by the parties. After review, the parties made suggested revisions and stipulated in writing to the resulting timeline. *See* Letter from Kenneth W. Wolf to Chief Judge Gregory W. Carman, October 5, 2000.

liminary Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan, 53 Fed. Reg. 45343 (Nov. 9, 1988) *(Preliminary Determination)*. Based on its initial investigation, Commerce established an estimated antidumping duty rate of 44.76 percent. *See id.* at 45,352. Commerce then directed the United States Customs Service (Customs) to suspend liquidation of all subject merchandise and to require importers to post either cash deposits or bonds securing the estimated antidumping duties. *See id.* at 45351.

General Bearing imported merchandise from Japan subject to the antidumping duty order. In the normal course of business, General Bearing imported entries that were secured by cash deposits and others that were secured by surety bond. Between November 1988 and April 1990, General Bearing imported forty-one bonded entries that are the subject of this consolidated action.[6] As to these forty-one entries, Washington International served as surety and posted the requisite bonds.

On May 15, 1989, Commerce published notice of an antidumping duty order finalizing its determination that antifriction bearings from Japan were being sold at less than fair value and were materially injuring the United States industry. *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 Fed. Reg. 20904 (May 15, 1989) *(Final Determination)*. In June 1990, Commerce initiated the First Annual Administrative Review covering subject merchandise entered between November 9, 1988 and April 30, 1990. Commerce determined that merchandise produced by companies that participated in the first administrative review would be liquidated at a company specific rate. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Therefrom From Japan; Final Results of Antidumping Duty Administrative Reviews,* 56 Fed. Reg. 31754, 31756 (July 11, 1991) *(Administrative Review Results)*. The importers would bear the burden of providing documentary evidence establishing that individual manufacturers had participated in the administrative review. *See id.* Merchandise manufactured by companies not participating in the first administrative review would be liquidated at the "all others" rate applicable at the time the merchandise was entered. *See id.*

The Group I entries and three of the Group II entries were liquidated between October 1991 and December 1991. The remaining Group II entries were liquidated on July 16, 1993.[7] At the time the Group I entries were liquidated, Customs was under the impression that General Bearing's entries were manufactured by companies that had not participated in the first administrative review. Accordingly, these entries were liquidated at the "all others" rate of 44.76 percent. In January 1992, Customs demanded that General Bearing pay the applicable duties owed on the Group I entries. Almost immediately, Gen-

[6] The entries secured by cash deposit are not before this Court.

[7] To date, the duties on these entries have not been paid.

eral Bearing protested, asserting that the merchandise had been manufactured by companies participating in the first administrative review and, therefore, was entitled to the company-specific duty rate.[8]

In February 1992, General Bearing refused to pay the outstanding duties on the Group I entries and, pursuant to the terms of the surety agreement, Customs sought payment from Washington International.[9] Washington International timely protested the rate at which the Group I entries were liquidated and Custom's demand for payment. The protest alleged grounds identical to those put forth by General Bearing in its protest – *i.e.* the bonded entries had been manufactured by companies participating in the first administrative review thereby making them eligible for liquidation at the company-specific duty rate.

Customs denied Washington International's protest on May 5, 1992, stating that its original liquidation determinations were correct. Following the denial of its protest, in May 1992, Washington International paid the duties demanded on twelve of the Group I entries.[10]

On July 16, 1993, Customs liquidated the thirty Group II entries. Bills were issued to Washington International and demand for payment was made. Washington International refused to pay the demanded duties, but did not protest Custom's liquidation. To date, the duties on the Group II entries have not been paid.

B. *General Bearing Corporation's Bankruptcy Proceeding and Settlement*

On September 16, 1991, subsequent to the dates of importation but prior to the liquidation of the entries involved in this action, General Bearing filed a Chapter 11 bankruptcy petition with the United States Bankruptcy Court for the Southern District of New York. *See In re General Bearing Corp.*, Bankr. Court Nos. 91-B-21424, 91-B-21425, 91-B-21426 (Bankr. S.D.N.Y. 1991). General Bearing informed Customs that its pending bankruptcy proceedings precluded it from paying any duties owed on the Group I entries. Based on this information, Customs seized approximately $4.4 million in cash deposits posted by General Bearing to secure certain of its entries and issued bills to General Bearing for the thirteen bonded entries in Group I.[11] As indi-

---

[8] The United States asserts General Bearing's protests were granted through the bankruptcy settlement.

[9] The surety bonds state, in relevant part:

Principal and Surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).

Principal and Surety agree that they are bound to the same extent, as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond.

Also, the surety bonds directly incorporated Customs regulation 19 C.F.R. §113.62 (1994), which provides:

(a) *Agreement to Pay Duties, Taxes, and Charges*

(1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, the obligors (principal and surety, jointly and severally) agree to:

(ii) pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

[10] Washington International argues that it paid in excess of $122,000.00 on the twelve Group I entries. It is unclear to the Court why Washington International did not pay the demanded duties on the thirteenth entry at the time the other twelve were paid. It is undisputed, however, that the duties on this entry were not paid until after this case was initiated and, therefore, this entry falls outside the jurisdiction of this Court.

[11] The facts demonstrate that bills were sent on at least the thirteen entries cited in Washington International's complaint in CIT No. 92-11-00720. Customs states that, although the remaining thirty entries were liquidated, bills were never issued to General Bearing or Washington International.

cated above, Washington International paid the duties demanded on twelve of these entries.

General Bearing, as debtor-in-possession, sought to overturn Customs' seizure of its cash deposits. To this end, General Bearing initiated an adversary proceeding against the United States seeking to recover the cash deposits. *See* Bankr. Adv. No. 92-5067A (Bankr. S.D.N.Y. March 3, 1992). General Bearing argued that because Customs had not liquidated the entries secured by the cash deposits prior to initiation of the bankruptcy proceedings, the cash deposits belonged to the bankruptcy estate. Additionally, General Bearing argued Customs' seizure of the cash deposits violated the automatic stay imposed by 11 U.S.C. § 362(a) freezing any and all collection actions initiated by General Bearing's creditors.[12] On May 20, 1992, the United States denied General Bearing's allegations and asserted various affirmative defenses, including the right to offset General Bearing's outstanding duty obligation with any property held by the United States. Washington International neither had notice of, nor was a party to, this action.

In September 1992, General Bearing and the United States agreed to a stipulation and settlement order terminating the adversary proceeding. The settlement order was approved and "So-ordered" by the bankruptcy court. Under the terms of the settlement, the United States agreed Customs would reliquidate the entries secured both by cash deposit and surety bond. The company-specific rate of 23.88% would be applied if documentation could be produced verifying the company's participation in the first administrative review. The settlement order established a payment scheme to refund General Bearing any excess duties due it as a result of the reliquidation, conditioned on the premise that the United States received full payment from Washington International of all outstanding duties. Pursuant to the settlement order, the United States would make demand to Washington International for all duties owed on any outstanding entries for which Washington International served as surety. If Washington International refused to pay the duties, the United States would use a portion of General Bearing's refund to offset the debt owed on the bonded entries. The settlement order stated, in relevant part:

> 7. Within 50 days of its receipt of a liquidation order from Commerce under this Settlement, Customs shall liquidate the entries covered by the liquidation order, or reliquidate in response to a valid Customs Claim, in accordance with the liquidation order. Fifty percent of all refunds due to General Bearing shall be paid within ten days of the effective date of

---

[12] 11 U.S.C. §362(a) provides in relevant part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title... operates as a stay, applicable to all entities of ...

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor.

> liquidation. The remaining fifty percent [of the refund] shall be held for one hundred days after which time it shall be paid to General Bearing, subject to any offset made by Customs in accordance with Paragraph 12 of this Stipulation of Settlement....
>
> 12. With respect to entries covered by surety bonds, Customs shall attempt to secure payment from General Bearing's surety (the "Surety"). General Bearing shall use its best efforts to provide Customs, within fourteen days from the date of this Order, with the documentation needed by Customs to secure such payment. In the event that the Surety refuses to pay on demand, and continues to refuse even after the Commissioner of Customs issues instructions to the District Directors and Regional Commissioners of Customs that they shall not accept a bond secured by the Surety, Customs shall have the right to offset the amount owed against any deposit then held by Customs.

In exchange for the restructured payment priority and refund of its cash deposits, General Bearing agreed to forgo any claim that the cash deposits were property of the bankruptcy estate and that the seizure of these deposits violated the automatic stay.

Between June and October 1993, Customs reliquidated the Group I entries, as well as the entries secured by the seized cash deposits. Additionally, in July 1993, the United States liquidated 27 of the Group II entries. Bulletin notices of reliquidation were posted at relevant ports of entry and refund checks were issued by Customs to General Bearing. The refund included money that was paid by Washington International and, thus, was erroneously paid to General Bearing. Pursuant to 19 C.F.R. §24.36(a) & (b) (1994), the refunds should have been issued to the party that originally paid the duties – Washington International. Washington International did not protest the reliquidation or the wrongful refund to General Bearing.

C. *Filing Suit with the Court of International Trade*

1. *CIT No. 92-11-00720*

On October 30, 1992, subsequent to the settlement order between General Bearing and the United States but prior to the reliquidation of the Group I entries, Washington International filed a summons with this Court initiating CIT No. 92-11-00720. On July 28, 1994, Washington International filed its complaint containing three counts challenging Customs' actions with respect to the Group I entries. Count I asserts Customs erroneously liquidated the relevant bonded entries at the rate of 44.76% as opposed to the company-specific rate applicable to participants in the first administrative review.[13] Washington

[13] Washington International claims that regardless of the individual rate applied, in no event can the duty exceed the 23.88% rate that was established as the maximum company-specific rate in the first administrative review.

International argues these entries should be reliquidated at the lower rate. Count II asserts that because it had paid the original duties on the cited entries it was entitled to any resulting refund. Washington International seeks a money judgment in the amount of the refund issued to General Bearing. Count III asserts that the settlement order entered into by General Bearing and the United States impermissibly altered the nature of the principal/surety relationship between General Bearing and Washington International. Specifically, Washington International contends that the settlement order substantially and materially increased its risk by narrowing the circumstances in which the government would exercise its regulatory right to set-off under 19 C.F.R. §24.72 (1994).[14] As a result of this material alteration, Washington International seeks a declaratory judgment discharging it from all outstanding liability under the bond agreements covering the Group I entries. On all counts, Washington International submits this Court possesses jurisdiction under 28 U.S.C. §1581(a) or, alternatively, 28 U.S.C. §1581(i). The United States has denied all substantial allegations in Washington International's complaint.

2. *CIT No. 96-10-02466*

On October 30, 1996, the United States filed its complaint in CIT No. 96-10-02466, initiating the second case in this consolidated action. The United States brought suit under 28 U.S.C. §1582(2) and (3) to recover from Washington International unpaid duties on the Group II entries in the principal amount of $308,101.48. In its complaint, the United States raised thirty counts against Washington International, each pertaining to the duties owed on a specific Group II entry.[15] As to each count, the United States claims: (1) that Washington International had contracted with General Bearing through either single transaction bonds or continuous bonds to act as surety for the importation of bearings from Japan; (2) bearings covered by the surety agreements were imported into the United States; (3) the duties for the imported bearings were fixed and undisputed; (4) demand for payment of these duties was unsuccessfully and continuously made on Washington International; and (5) the outstanding duties are still owed on the relevant entries.

Washington International admits the first three of the claims listed above. It denies, however, claims four and five for "lack of information or knowledge sufficient to form a belief as to the truth of the allegation." Additionally, Washington International raises six affirmative defenses: (1) the action is barred in whole or part by the expiration of the applicable period of limitations; (2) the action is barred by the doctrine of estoppel; (3) the action is barred by the doctrine of

---

[14] 19 C.F.R. 24.72 provides:
When an importer of record or other party has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the district director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government.

[15] For a full list of the entries at issue in CIT No. 96-10-02466 *see* footnote 4.

waiver; (4) the action is barred by the doctrine of accord and satisfaction; (5) the failure of the United States to utilize the cash deposits it had on hand from the importer to offset the debt owed by the importer as a result of the subject entries constitutes a release of the surety and a discharge of its bond obligations; and (6) the issuance of a refund by the United States to General Bearing and the agreement to issue said refund constitutes a release of the surety and a discharge from its bond obligations.

DISCUSSION

Several potentially dispositive motions are before the Court in this consolidated action. With respect to the Group I entries in CIT No. 92-11-00720, Washington International has filed a motion for summary judgement and the United States has filed a motion to dismiss and a cross-motion for summary judgment. In CIT No. 96-10-02466, the parties have filed cross-motions for summary judgment on the Group II entries. The following sections will address each motion independently.

A. *United States Motion to Dismiss CIT No. 92-11-00720 – the Group I Entries*

1. *Contentions of the Parties*

(a) *The United States*

The United States challenges this assertion and argues this Court does not have jurisdiction under either 28 U.S.C. §§1581(a) or 1581(i). (Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Defendant's Motion to Dismiss and Cross-Motion for Summary Judgment, at 15.) (Defendant's Motion to Dismiss). Accordingly, the United States urges this Court to dismiss CIT No. 92-11-00720 in its entirety.

(i) *28 U.S.C. §1581(a) Jurisdiction:*

The United States contends that 19 U.S.C. §1581(a) limits this Court's jurisdiction to "civil action[s] commenced to contest the denial of a protest, in whole or in part." (Defendant's Motion to Dismiss, at 16, 19). To have jurisdiction over CIT No. 92-11-00720, the United States argues Washington International must have filed with Customs a valid and timely protest that was subsequently denied.[16] (*Id.*, at 19.) Although acknowledging that on May 5, 1992, Washington International timely protested the liquidation of Group I Entry Nos. C15-0008303-0; C15-0008318-8; C15-0008357-6; C15-0008363-4; C15-0008375-8; C15-0008380-8; C15-0009794-9; C15-0008342-8; C15-0008362-6; C15-0008312-2; and C15-0008321-2,[17] the United States argues that

[16] The United States points to 19 U.S.C. §1514(c)(5) as authority for its argument. This section provides that a protest must be filed within 90 days of notice of liquidation or reliquidation.

[17] This protest was subsequently denied by Customs.

this protest was rendered moot by Customs' subsequent reliquidation of these entries. (*Id.*, at 20–21.) The United States submits that on June 25 and June 29, 1993, Entry Nos. C15-0008303-0; C15-0008318-8; C15-0008351-9; C15-0008357-6; C15-0008363-4; C15-0008375-8; C150008380-8; C15-0009794-9; C15-0008342-8; C15-0008362-6; C15-0008312-2; and C15-0008321-2 were "reliquidated" and bulletin notices properly posted at the relevant ports of entry triggering the ninety days within which Washington International could protest the reliquidations. (*Id.*)

Washington International failed to protest these reliquidations or the refunds issued to General Bearing. Absent a timely protest, the United States contends the reliquidation was final and conclusive on Washington International and not subject to judicial review. (*Id.*, at 21.) The United States argues that Washington International failed to avail itself of its administrative remedies and thereby satisfy the condition precedent to 28 U.S.C. § 1581(a) jurisdiction. (*Id.*, at 25–26.) As a result, the United States argues this Court lacks jurisdiction to adjudicate the merits of Washington International's claims under 28 U.S.C. §1581(a). (*Id.*)

(ii) *28 U.S.C. §1581(i) Jurisdiction:*

The United States argues this Court may not exercise 28 U.S.C. §1581(i) jurisdiction over CIT No. 92-11-00720. (*Id.*, at 32.) Specifically, with respect to Count I and Count II, the United States maintains 28 U.S.C. §1581(i) jurisdiction is proper only where jurisdiction *could not* have been obtained under any of the preceding subsections in section 1581. (*Id.*, at 28) (emphasis added). Thus, because Washington International could have filed a proper and timely protest of Customs' reliquidation and erroneous refund, it could have obtained jurisdiction under 28 U.S.C. §1581(a). (*Id.*, at 29.) The United States argues that 28 U.S.C. §1581(i) was never intended to serve as a backdoor through which a party could gain entry to court after failing to satisfy the jurisdictional prerequisites that would open the front door – *i.e.* sections (a) – (h). (*Id.*) Accordingly, because neither 28 U.S.C. §1581(a) nor §1581(i) apply, the United States argues this Court lacks all bases for jurisdiction to adjudicate Count I and Count II of Washington International's complaint.

The United States further asserts this Court lacks jurisdiction over Count III of Washington International's complaint. (*Id.*, at 30.) In Count III Washington International seeks discharge of its obligations under the surety bond contracts because the United States failed to exercise its regulatory right of set-off against General Bearing's outstanding debt. The United States argues that because 19 C.F.R. §24.72 was not specifically intended to benefit the surety but rather to protect the government, the obligations therein may not be read into the surety's bond contracts. (*Id.*, at 30–31.) Therefore, the United States maintains: (1) it was under no obligation to offset General Bearing's debt and, thus Washington International's claim is without merit;

and (2) there are no grounds under which this count could be brought under the auspices of 28 U.S.C. §1581(i). (*Id.*, at 31–32.) Accordingly, the United States argues Count III should be dismissed.

(b) *Washington International*

Washington International asserts that jurisdiction over the entirety of its action properly resides in this Court pursuant to 28 U.S.C. §§ 1581(a) or 1581(i). (Plaintiff's Reply Memorandum and Opposition to Defendant's Motion to Dismiss and for Summary Judgment, at 5.) (Plaintiff's Reply Memorandum). With respect to 28 U.S.C. §1581(a), Washington International argues two points. First, although acknowledging that reliquidation is normally a protestable decision within the context of 19 U.S.C. §1514, Washington International argues that, as a surety, it had "no grounds to contest the reliquidations in this case." (Plaintiff's Reply Memorandum, at 6–7.) Washington International characterizes the reliquidation as merely an "administrative vehicle to implement the settlement negotiated between General Bearing and the United States" that "resulted in a *lower* duty burden on General Bearing and Washington International." (*Id.*, at 7.) (emphasis in brief).

Second, Washington International argues jurisdiction is proper because at the time the purported "reliquidation" was conducted the relevant Group I entries were already under the jurisdiction of this Court. (*Id.*) CIT No. 92-11-00720 was filed prior to the reliquidation but subsequent to the denial of Washington International's original protest, thus arguably distinguishing the present case from the cases cited by the United States indicating that reliquidations must be protested in order to give rise to 28 U.S.C. §1581(a) jurisdiction. (*Id.*) Washington International distinguishes the cited cases because they involved reliquidation of entries *prior* to the commencement of a court action challenging the original protests. (*Id.*) Thus, the timeline would be as follows: entry → liquidation → denial of protest → reliquidation → *litigation*. In the present case, Washington International argues there is a crucial difference in the procedural timeline: entry → liquidation → denial of protest → *litigation* → reliquidation. Washington International urges that because the alleged reliquidations occurred some seven months *after* CIT No. 92-11-00720 had been commenced, jurisdiction had already vested with this Court and could not be removed by subsequent agency action. (*Id.*) Washington International argues that to accept the government's position would grant Customs the authority to "undermine virtually every action commenced under section 1581(a), by issuing even a one cent refund and requiring the importer to protest the reliquidation" and would "wreak havoc with this Court's jurisdiction." (*Id.* at 7–8.)

Finally, Washington International argues that in the absence of 28 U.S.C. §1581(a) jurisdiction, the unusual sequence of events in the present case gives rise to 28 U.S.C. §1581(i) jurisdiction over all Counts in its complaint. (*Id.*, at 8.) Washington International notes that 28

U.S.C. §1581(i) provides a jurisdictional basis for challenges not addressed by the other provisions of section 1581 or where the other subsections are manifestly inadequate. (*Id.*, at 9.) In the present case, Washington International asserts the facts clearly demonstrate that a protest of the reliquidation would have been futile, thereby creating a situation in which 28 U.S.C. §1581(a) jurisdiction was manifestly inadequate.

2. *Analysis*

Federal courts have limited jurisdiction and absent contrary evidence must presume a cause of action lies outside of that jurisdiction. *See Kokkonen v. Guardian Life Insurance Company of America,* 511 U.S. 375, 377 (1994). The party seeking to bring an action must prove it properly comes within a federal court's jurisdictional scope. *Elkem Metals Co. v. United States*, 44 F. Supp. 2d 288, 294 (Ct. Int'l Trade 1999). Accordingly, before this Court can judge the merits of Washington International's legal claims, it is imperative to determine whether there exists the jurisdictional authority to so adjudicate.

(a) *The Court Possesses 28 U.S.C. §1581(a) Jurisdiction Over Count I of CIT No. 92-11-00720.*

The facts and circumstances precipitating this consolidated action create uniquely complex jurisdictional questions. Washington International filed a timely and valid protest with Customs that was subsequently denied. In response, Washington International initiated suit in this Court and claimed jurisdiction under 28 U.S.C. §§ 1581(a) or 1581(i). Subsequent to the filing of suit, the United States engaged in conduct that it now claims divests this Court of jurisdiction over this action.

The principal statutory provision granting this Court jurisdiction over Customs' actions, 28 U.S.C. §1581(a), states that "the Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930." The United States argues that when Customs reliquidates an entry pursuant to a valid protest or because it believes the original liquidation was incorrect, the "[r]eliquidation vacates and is substituted for the collector's original liquidation." *Mitsubishi Electronics America, Inc. v. United States*, 865 F. Supp. 877, 879 (Ct. Int'l Trade 1994), *quoting*, *United States v. Parkhurst & Co.*, 12 Ct. Cust. 370, 372-272 (Ct. Cust. App. 1924). Moreover, the United States argues this Court, as a general rule, has interpreted 28 U.S.C. §1581(a) to require a party to protest reliquidations as a prerequisite to judicial review. Because Washington International failed to protest Customs' reliquidation, the United States urges that a necessary element of this Court's 28 U.S.C. §1581(a) jurisdiction is missing – the denial of a protest.

The United States is correct that this Court, as a general rule, has required parties to protest a reliquidation as a jurisdictional prerequisite to obtaining judicial review under 28 U.S.C. §1581(a). *See, e.g.,*

SSK Industries, Inc. v. United States, 101 F. Supp. 2d 825, 829 (Ct. Int'l Trade 2000). The United States acknowledges, however, this general rule arose from cases in which a plaintiff filed suit *after* Customs had reliquidated the relevant entries; thus these cases are factually distinguishable from the present case.[18] (Reply Memorandum in Response to Plaintiff's Opposition to Defendant's Motion to Dismiss and Cross-Motion for Summary Judgment, at 9.) (United States Reply Memorandum). Nonetheless, the United States argues the rule of law cited in these cases applies with the same force in cases where a purported "liquidation" occurs after a lawsuit has been properly filed. (*Id.*) In other words, the United States argues the rule applies to "post-summons" liquidations and, therefore, applies to the present dispute. Unfortunately, the United States' argument would require this Court to construe the cases it cites in a manner that contradicts recognized legal principles.

There exists a long-standing rule in federal courts that subject-matter jurisdiction is determined at the time the suit is filed and, after vesting, cannot be ousted by subsequent events. *See, e.g., F. Alderete General Contractors, Inc. v. United States*, 715 F.2d 1476, 1480 (Fed. Cir. 1983). This rule has been interpreted to include not only the acts of individual litigants, but also to "preclude subsequent agency action from divesting [a] court of jurisdiction, once jurisdiction is established." *International Graphics v. United States*, 4 Cl.Ct. 186, 193 (Cl. Ct. 1983), *citing*, *F. Alderete General Contractors*, 715 F.2d at 1481.

The Court recognizes this rule has been infrequently applied to federal question cases and that courts have been willing to disregard it when the circumstances so warrant. *See New Rock Asset Partners v. Preferred Entity Advancement Inc.*, 101 F.3d 1492, 1503 (3d Cir. 1996). The Court finds, however, that the rule's underlying purpose compels its application in the present case. As the Third Circuit noted in *New Rock Asset Partners*, 101 F.3d at 1504, this rule is primarily intended to prevent the manipulation of federal jurisdiction, promote judicial efficiency, and constrain the use of strategic behavior by litigants. To accept the United States' argument that 28 U.S.C. §1581(a) requires the protest and denial of post-summons liquidations would, in effect, condone the very conduct the rule was intended to prevent and would be tantamount to granting Customs the authority to hinder, delay, and frustrate judicial review through arbitrary post-summons liquidations. Such a grant of authority would waste judicial resources by placing 28 U.S.C. §1581(a) cases in a figurative revolving door spinning in and out of court at Customs' whim. This would confer upon Customs an inequitable ability to control the course of a plaintiff's litigation, thereby discouraging potential litigants from pursuing their rightful claims under 28 U.S.C. §1581(a). Cloaked in a shroud of pro-

[18] For clarity and to distinguish the present dispute from the cases cited by the United States in which the reliquidation occurred prior to the filing of a summons, the Court will refer to the purported reliquidation that occurred in the present case as a "post-summons" liquidation.

cedural legitimacy, Customs could unilaterally hinder the judicial process and arbitrarily divest this Court of jurisdiction over legitimate legal claims. The Court, therefore, agrees with Washington International that to apply the jurisdictional prerequisite found in 28 U.S.C. §1581(a) to post-summons liquidations could "undermine every action commenced under section 1581(a)" and thereby "wreak havoc on this Court's jurisdiction." (Plaintiff's Reply Memorandum, at 8).

Jurisdiction over Customs' actions is measured at the time the summons is filed. Once entries are properly before the Court, Customs is powerless to exert authority over these entries in the absence of a Court order. As such, Customs' purported "reliquidation" is a nullity. The fact that Customs acted pursuant to the bankruptcy settlement order is irrelevant. The Court recognizes that comity ordinarily invites the courts of one jurisdiction to give effect to the judicial decisions of another court. Comity is an equitable principal designed to preserve judicial resources and to avoid the embarrassment of conflicting judgments. *See Church of Scientology of California v. United States Army*, 611 F.2d 738, 749 (9th Cir. 1979). These concerns, however, are not implicated where a court enters an order affecting subject matter outside the scope of its jurisdiction and compelling a party to take actions for which it does not possess authority. The Bankruptcy Court "So-ordered" Customs to reliquidate entries for the purpose of reassessing applicable antidumping duty rates. The Court of International Trade has been granted exclusive jurisdiction over issues arising out of the trade laws and it is clear that reliquidation for this or any other purpose falls squarely within this exclusive jurisdiction.

At no time before entering into the settlement agreement did Customs seek permission from this Court to specifically reliquidate the Group I entries. This failure placed Customs between the proverbial "rock and a hard place." If Customs failed to implement the terms of the settlement it would have been in breach of the bankruptcy order. At the same time, implementation of that order required Customs to act outside its authority and without any reasonable belief that this Court would recognize or accept the reliquidation of the Group I entries. Had Customs been more cognizant of the settlement order's ramifications, and had it been more concerned with the sanctity of this Court's jurisdiction, the Bankruptcy settlement agreement would never have been agreed to in its present condition. Customs, however, chose to enter into this agreement and now must abide by the ramifications of its choice.

The Court finds Customs' "reliquidation" of the Group I entries to be a nullity. Accordingly, Washington International's original protest remains valid and the Court has jurisdiction over Count I of Washington International's complaint pursuant to 28 U.S.C. §1581(a). The United States' motion to dismiss Count I is denied.

(b) *The Court Does Not Possess 28 U.S.C. §1581(i) Jurisdiction over CIT No. 92-11-00720.*

Washington International argues this Court has jurisdiction over Count II and Count III of its complaint pursuant to 28 U.S.C. §1581(i). Although recognizing that the alleged wrongful refund of excess duties paid on the Group I entries was a protestable decision, Washington International argues it would have been futile to file such a protest in light of the bankruptcy settlement order.

Assuming, *arguendo*, that Washington International's futility argument is correct, this Court could not exercise 28 U.S.C §1581(i) jurisdiction in this case because of Washington International's failure to adhere to procedural requirements set forth in 28 U.S.C. §2632(a) and USCIT R. 3(a). Congress, in 28 U.S.C. §2632(a) explicitly set forth the manner in which a civil action may be commenced in this Court. Specifically, Congress provided that:

> Except for civil actions specified in subsections (b)[19] and (c)[20] of this section, a civil action in the Court of International Trade shall be commenced by filing *concurrently* with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the Court. (emphasis added).

The Court, pursuant to the mandate set forth in this statute, adopted Rule 3(a) which states: "A civil action is commenced by filing with the clerk of the court... (1) a summons in an action described in 28 U.S.C. §1581(a) or (b); (2) a summons, and within 30 days thereafter a complaint, in an action described in 28 U.S.C. §1581(c) to contest a determination listed in section 516a(a)(2) or (3) of the Tariff Act of 1930, or; (3) *a summons and complaint in all other actions*." (emphasis added).

Washington International filed its summons in CIT 92-11-00720 in 1992 initiating a suit under 28 U.S.C. §1581(a). As stated, the complaint was not filed until 1994, thereby depriving the United States of any notice that it would be sued for these actions. Washington International has unsuccessfully attempted to bootstrap two 28 U.S.C. §1581(i) counts onto a 28 U.S.C. §1581(a) case. Past attempts show that it is extremely difficult for a party to join claims raised under 28 U.S.C. §1581(a) and 28 U.S.C. §1581(i) in a single action and, as such, these divergent claims are typically raised in separate lawsuits. In cases, however, where a plaintiff seeks to join the two issues in one lawsuit, the plaintiff must ensure it complies with the procedural requirements for both types of cases. Failure to do so will preclude the Court from exercising jurisdiction over what otherwise would be a legitimate legal claim. Accordingly, the Court finds that it does not possess 28 U.S.C. §1581(i) jurisdiction over Count II and Count III of

[19] Allows for a civil action brought under section 515 or 516 of the Tariff Act of 1930 to be commenced by the filing of a summons only.

[20] Allows for a civil action brought under section 516A of the Tariff Act of 1930 to be commenced by the filing of a summons only, or by the filing of a summons and complaint.

Washington International's complaint. The United States' motion to dismiss is granted as to these two counts.

3. *Conclusion*

This Court finds that it possesses jurisdiction under 28 U.S.C. §1581(a) to adjudicate Count I of CIT No. 92-11-00720. Jurisdiction does not exist to adjudicate Counts II and III. Accordingly, the United States' motion to dismiss CIT No. 92-11-00720 is granted in part and denied in part.

B. *Cross-Motions for Summary Judgment in CIT No. 92-11-00720 – the Group I Entries*

1. *Analysis*

Under the rules of this Court, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(c). Summary judgment, however, cannot serve as a substitute for trial and thus, the Court's function is not to resolve factual issues but to determine whether there are any factual disputes material to the resolution of the case. *See Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1570 (Fed. Cir. 1991), *citing*, *Meyers v. Brooks Shoe, Inc.*, 912 F.2d 1459, 1461 (Fed. Cir. 1990). If a material dispute of fact is present, summary judgment is not proper.

The United States raises a genuine issue of material fact that renders summary judgment inappropriate in the present case. In its papers, the United States argues the reliquidation of the Group I entries at the lower, company-specific duty rate was erroneous because no evidence exists demonstrating that the relevant manufacturers participated in the first administrative review. In other words, the United States argues the reliquidation was a mistake. Absent proof of participation, the United States argues the Group I entries were properly liquidated at the "all others" duty rate and Washington International is not entitled to any refund.

Washington International counters by asserting that "it is disingenuous for the Government to argue the reliquidation was a mistake." (Plaintiff's Reply Memorandum, at 14). Washington International argues that through the bankruptcy settlement, "the United States and [General Bearing] concurred that the amount of duty due and owing on the subject entries was the amount as provided in the Final Results of the Administrative Review, *i.e.*, 23.88%." (Washington International's Motion for Summary Judgment, at 9). After this agreement was "So-ordered" by the bankruptcy court, the relevant entries were reviewed by an "import-specialist" and a "supervisory import-specialist" and the reliquidations occurred. To Washington International, this constitutes *prima facie* evidence that the Group I entries were properly reliquidated at the 23.88% duty rate.

Finally, Washington International points to a letter from Customs to General Bearing's bankruptcy counsel that stated:

> Finally, in the liquidations resulting from the 1992 and 1993 settlement agreement between Customs and General Bearing, Customs inadvertently issued $64,398.24 to General Bearing of duties which had been paid by General Bearing's surety, Washington International Insurance Company.

Washington International argues that "had [Customs] truly believed that the reliquidations were in error, it would have been far simpler for Customs to have stated that fact" and thus "the full and only inference which may be drawn from Customs' letter is that the refunds were erroneously issued to General Bearing, not that the reliquidations were in error." (Plaintiff's Reply Memorandum, at 15.)

The Court has already determined the purported "reliquidation" ordered by the bankruptcy court to be a nullity. As such, the Court declines to rely upon this order as evidence of the Group I entries' eligibility for reliquidation. Similarly, for purposes of this motion the Court is bound to view the evidence in a light most favorable to the non-moving party – the United States – and as such, cannot draw the inference urged by Washington International. The record evidence before the Court is insufficient to negate the genuine issue of material fact raised by the United States. Similarly, the issue cannot be resolved by resort to the parties; USCIT R. 56(i) statements. Accordingly, the issue of whether the manufacturers of the Group I entries participated in the first administrative review and, therefore, are entitled to a company-specific rate cannot be resolved by summary judgment.

2. *Conclusion*

The Court finds a genuine issue of material fact to be present regarding the eligibility of the Group I entries for reliquidation at a company-specific rate. Washington International's motion for summary judgment with respect to Count I CIT No. 92-11-00720, therefore, is denied. The United States cross-motion for summary judgment is also denied. Pursuant to the attached order, the parties are instructed to confer with each other as to the nature of the discovery to be taken on this issue and to schedule a conference with the Court to establish a formal timetable for the efficient disposition of this matter.

C. *Parties Cross-Motions for Summary Judgment in CIT No. 96-10-02466 – the Group II Entries*

As indicated above, the United States initiated CIT No. 96-10-02466 to compel payment of unpaid duties from Washington International in the principal amount of $308,101.48, plus pre- and post-judgment interest as required by law. It is undisputed that between November

10, 1988 and May 31, 1989, General Bearing imported the thirty Group II entries. On April 19, 1986, General Bearing, as principal, and Washington International, as surety, made, executed, and delivered to Customs a "continuous entry bond" in the amount of $100,000.00. This bond secured six of the Group II entries. The remaining twenty-four entries were each secured by separate "single-transaction bonds." Customs liquidated three of the Group II entries on December 6, 1991 and the remaining twenty-seven entries on July 16, 1993 at the rate of 44.76 percent. To date, these duties have not been paid.

1. *Contentions of the Parties*

(a) *The United States*

The United States' contentions are straightforward. The main thrust is that the unambiguous language of the "continuous entry" and "single transaction" bonds jointly and severally obligates Washington International and General Bearing to pay any duties determined to be legally due. (Memorandum in Support of Plaintiff's Motion for Summary Judgment, at 5) (United States Motion for Summary Judgment). Washington International expressly agreed to bind itself to the same extent as the principal, General Bearing, for the duties owed to the United States arising from liquidation of the subject entries. (*Id.*, at 12.) Accordingly, the United States argues Washington International entered into a contractual relationship whereby it agreed to be answerable up to the limit of its bonds as through it were the principal. (*Id.*, at 13). Additionally, the United States rejects Washington International's affirmative defenses as without merit and urges this Court to dismiss them in their entirety.

(b) *Washington International*

Washington International contests neither the validity of the relevant surety bonds nor the contractual liability attendant thereto. To the contrary, Washington International recognizes the bonds render it jointly and severally liable with General Bearing for any unpaid duties on the Group II entries. Despite this recognition, Washington International asserts several "non-contractual, common law defenses... to excuse [its] performance." (Defendant's Response to Motion for Summary Judgment and Cross Motion for Summary Judgment, at 6) (Washington International's Response Motion.).

As noted above, Washington International asserts six affirmative defenses in its answer. (Washington International's Answer, at 18–19.) In both its motion for summary judgment and in response to the United States' summary judgment motion, however, Washington International merges these defenses into a single contention: that the bankruptcy settlement materially increased its contractual risk by limiting the conditions under which the United States would setoff General Bearing's debts. Thus, the settlement operates as a discharge of its underlying bond obligations. (Washington International's Response Motion, at 6–7.)

2. *Analysis*

There is no question as to the Court's jurisdiction over the United States' claims in CIT No. 96-10-02466. This Court has been granted express authority to adjudicate "any civil action which arises out of an import transaction and which is commenced by the United States... (2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury... or (3) to recover customs duties." 28 U.S.C. §1582(2) & (3) (1994). The United States seeks to recover upon twenty-five bonds securing antidumping duties on the thirty Group II entries.

This case, however, involves more than the recovery of duties. It requires this Court to examine the contractual relationship between a surety, a principal, and a creditor. Although this relationship is typically governed by state law, the parties assert and the Court agrees that federal common law applies. (Supplemental Memorandum of Washington International Insurance Company, at 1–2; Government's Memorandum of Law, at 2.) *See also, United Pacific Ins. Co. v. United States*, 70 F. Supp. 2d 1089, 1093 (9th Cir. 1999); Restatement (Third) of Suretyship and Guaranty § 1, Introductory Note, pp 3–4 (1996) ("the rules in the Restatement apply to any transaction *regardless of its form* that fulfills the criteria for suretyship...) (Restatement (Third)). The Court, therefore, must apply not only federal statutory and regulatory guidelines governing Customs' conduct, but where these guidelines fail to address certain issues, the Court must look to the general principles of suretyship law as reflected in federal case law, the Restatement (Third), and non-conflicting state law. *See, e.g., Axess International, Ltd. v. Intercargo Ins. Co.*, 183 F.3d 935 (Fed. Cir. 1999) (noting the usefulness of the Restatement (Third) as a yardstick against which surety issues should be measured).

Washington International seeks discharge from its bond obligations on the grounds that the bankruptcy settlement between the United States and General Bearing materially increased its contractual risk by limiting the terms under which the United States would offset General Bearings' outstanding debt.[21] The federal common law is clear that when a surety's contractual obligation is materially altered without its knowledge or consent in a manner that increases its risk, the surety is to be discharged to the extent that it is prejudiced or damaged. *See, e.g., National Surety Corp. v. United States*, 118 F.3d at 1544–45, *quoting, United States v. Reliance*, 799 F.2d 1382, 1385 (9th Cir. 1986); Restatement (Third) § 37.[22] Although acknowledging that the bankruptcy settlement agreement increased Washington

---

[21] The Court notes that Washington International fails to address the fact that once a bankruptcy petition is filed, the automatic stay provision of 11 U.S.C. §362(h) prevents the application of the government's right to setoff. Setoff could occur only where the United States petitioned the bankruptcy court to lift the automatic stay.

[22] Restatement (Third) §37 provides: "(1) If the obligee acts to increase the secondary obligor's risk by increasing its potential cost of performance or decreasing its potential ability to cause the principal obligor to bear the cost of performance, the secondary obligor is discharged as described in sections (2) and (3). An act that increases the secondary obligor's risk of loss by increasing its potential cost of performance or decreasing its potential to cause the principal to bear the cost of performance is an 'impairment of suretyship status.'"

International's exposure under the bonds, the Court finds that the agreement in no way materially altered the bonds' contractual terms.

The language of the bonds entered into by Washington International, General Bearing, and Customs is sparse with respect to the obligations assumed by each party. The totality of the relevant language is as follows:

> In order to secure payment of any duty, tax, or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts as set forth below.
>
> Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s).
>
> Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the Customs Regulations into this bond

The joint and several liability stemming from this language grants the United States the discretionary authority to seek payment of outstanding duties from Washington International independently of any action that may be brought against its principal. The bankruptcy settlement agreement implicitly acknowledged this discretion and established Washington International as the party from which payment would initially be sought. Nothing in the language exposed Washington International to any greater risk, materially altered any of the contractual provisions in a manner that increased its contractual liability, nor impermissibly altered the payment structure of the bonds. To the contrary, Washington International remained liable for the full amount of duties for which it agreed to serve as surety and was free to exercise its legal right of redemption against General Bearing's estate.

Just as the bankruptcy settlement agreement did not materially alter Washington International's contractual liability, it did not limit Customs' contractual obligation to exercise setoff. In fact, it would have been impossible for the settlement agreement to limit Customs' contractual setoff obligations because the bond neither contains language imposing such an obligation, nor explicitly incorporates Customs' setoff regulation – 19 C.F.R. §24.72. In the absence of such explicit language, the Court declines to implicitly incorporate this regulation into Customs' surety bonds. Additionally, the Court notes that by lifting the automatic stay so as to allow implementation of the bankruptcy settlement order, the Bankruptcy Court, in essence, broadened the United State's opportunities to conduct setoff.

In the absence of a material alteration to its contractual agreement, the Court possesses no legal grounds to discharge Washington International from its obligations under the surety bonds. The Court

of International Trade, however, possesses power both in law and equity. *See* 28 U.S.C. §1585 (1994). There are two well-established equitable rules that allow courts under certain circumstances to provide a surety relief in the absence of a material alteration of its contractual obligations.

First, where a principal is insolvent and there is danger of hardship to the surety, a court of equity, at the insistence of the surety, may require a creditor to resort to any collateral security of the principal debtor *in the hands of the creditor* before resorting to the surety or any security provided by it if this can be done without substantially injuring the creditor. (emphasis added) *See Yale Express System, Inc. v. Boston Insurance Company*, 362 F.2d 111, 114-15 (2d Cir. 1966). *See also,* 72 C.J.S. *Principal and Surety* §219; Restatement (Third) §35, Comment on Paragraph D ("[i]f... the principal obligor is insolvent and enters bankruptcy, denying the secondary obligor the ability to utilize [setoff] would have the usual effect of giving the obligee the ability to determine whether the secondary obligor received the full benefit of the unrelated claim"); 63 NY Jur. 2d Guaranty and Suretyship §342 (1987) ("A surety, when sued, cannot itself use the principal's counterclaim so long as the principal is solvent and thus able to respond to a claim for exoneration."). In other words, this rule means that when a principal is insolvent, a surety, either through demand or judicial decree, may require the United States to setoff any duties owed against excess cash deposits held by Customs prior to seeking payment from the surety.

Second, a surety may compel a creditor to setoff the debts of an insolvent principal against retained collateral when "the surety would be entitled to resort [to] reimbursement upon satisfaction of the creditor's claim as the latter's subrogee." 63 NY Jur. 2d Guaranty and Suretyship §342 (1987), *citing, Associated Food Stores, Inc. v. Siegel*, 205 NYS2d 208 (N.Y. App. Div. 1960). Although this exception is derived from state law, federal courts have held that in the absence of a "significant conflict" between state and federal law it is permissible to look to state substantive law for guidance in determining the contours of federal common law. *See United Pacific Insurance Co. v. United States*, 70 F. Supp. 2d 1089, 1098 (C.D. Cal. 1999), *citing, United States v. Reliance*, 799 F.2d 1382, 1385 (9th Cir. 1986). The Court finds that this state-based exception does not conflict with federal law but in fact, compliments Customs' regulation regarding claims against the estate of an insolvent importer. Specifically, 19 C.F.R. §141.1(c) provides:

> The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section

[507(a)(8)(F)][23] of the Bankruptcy Code.

This regulation means that, upon payment of the demanded duties, Washington International would step into the United States' shoes as a creditor against General Bearing's estate and would assume the government's bankruptcy priority. Pursuant to 11 U.S.C. §507(a)(8)(F), the United States possesses priority over virtually all other unsecured claims, thereby entitling Washington International functionally to serve as the United States' subrogee in its claim for reimbursement and, thus benefit from this exception.

Although these two rules provide courts with the equitable authority to compel the United States to setoff a sureties' debt against the retained collateral of an insolvent principal prior to making demand on the surety, implicitly they create two conditions precedent that are not satisfied in the present case: (1) the surety must insist that setoff occur; and (2) the government must be in actual possession of the excess collateral. In order for the court to compel setoff, Customs must be *in possession of excess cash deposits* or some other form of collateral posted by the insolvent principal. If Customs lawfully disposes of this collateral prior to making demand upon the surety or before the surety insists that setoff occur, the Court is powerless to compel setoff under the common law. Once the money is returned to the principal, Customs may lawfully seek payment from the surety and, upon payment, the surety may act as the United States' subrogee in its claim against the principal's estate. *See* 19 C.F.R. §141.1(c). It is clear from the facts of the present case that Customs no longer possesses any of General Bearing's excess cash deposits that could be applied against setoff. Pursuant to the bankruptcy settlement order, Customs refunded 50% of the retained deposits no later than 10 days after the date the relevant entries were reliquidated. The relevant entries were reliquidated on June 29, 1993. It is undisputed that the first refund occurred ten days later, on July 9, 1993. The Group II entries were liquidated and demand for payment was made on Washington International on July 16, 1993. By law, the liquidation of the Group II entries became final and conclusive 90 days later, on October 14, 1993. Again, pursuant to the bankruptcy settlement order, the remaining 50% was refunded one hundred days after the first 50% was refunded – October 17, 1993. The timing of the events created a three-day window during which the surety could have demanded that Customs setoff its duty obligations against the retained cash depos-

---

[23] The regulation specifically refers to 507(a)(7), however, this section covers unsecured claims by matrimonial creditors and creditors seeking to enforce child support orders. Section 507(a)(8)(F) specifically provides for "customs duty arising out of the importation of merchandise–

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date"

its. Washington International's failure to do so allowed Customs to close that window and preclude any possibility of a court ordered setoff. It is imperative, therefore, for a surety to exercise diligence in situations where its principal is insolvent and to protect itself through a timely request for setoff. Additionally, because of the explicit prohibition of setoff imposed by the automatic stay it is imperative that a surety protects its interests by seeking to have the stay lifted, thereby allowing setoff.

The Court finds that the bankruptcy settlement agreement did not materially alter Washington International's contractual obligations, thereby negating the possibility of discharge. Similarly, the Court finds the conditions precedent for compulsory setoff to be absent and thus, cannot provide Washington International with equitable relief. Accordingly, the Court holds that Washington International is not discharged from its bond liability and remains obligated for the duties plus interest as required by law on entries: 419-01557482; 419-01569289; 419-01570352; 419-01597181; 419-01594873; 419-0159445-0; C15-00083352; C15-00097915; C15-00097956; C15-00097857; C15-00083550; C15-00083253; C15-00083477; C15-00083527; C15-00097899; C15-00083568; C15-00083600; C15-00083279; C15-00083220; C15-00083147; C15-00083261; C15-00083766; C15-00083139; C15-00083071; C15-00097824; C15-00097808; C15-00083725; 419-15913333; C15-00083329; C15-00083832.

Conclusion

For the above stated reasons, the Court finds: (1) 28 U.S.C. §1581(a) jurisdiction exists over Count I of Washington International's complaint; (2) 28 U.S.C, §1581(i) jurisdiction does not exist over Count II and Count III of Washington International's complaint; (3) a genuine issue of material fact exists regarding whether the Group I entries are entitled to reliquidation at a company-specific rate; (4) the bankruptcy settlement agreement did not materially alter Washington International's contractual obligations on the bonds securing either the Group I or Group II entries and, therefore, Washington International remains liable for all unpaid duties plus interest as required by law on these entries; and (5) the conditions necessary to allow a court to compel equitable setoff were not satisfied.

Accordingly, the Court holds: (1) the United States motion to dismiss CIT No. 92-11-00720 for lack of jurisdiction is granted in part and denied in part; (2) the parties' cross-motions summary judgment in CIT No. 92-11-00720 are denied; (3) the United States' motion for summary judgment in CIT 96-11-02466 is granted and judgment is entered for the United States; (4) Washington International's cross-motion for summary judgment in CIT No. 96-11-02466 is denied.

Because the Court has ordered the issue of whether the Group I entries are entitled to reliquidation at a company-specific rate to be tried, ordinarily the judgment entered in favor of the United States on the Group II entries would be interlocutory and, therefore, not

subject to appeal until the final resolution of this consolidated action. However, due to: (1) the completely unrelated nature of the issues relevant to the judgment on the Group II entries and to the remaining question of material fact; and (2) the uncertainty as to the duration of any future proceedings necessary to resolve the outstanding issue of material fact, the Court can find no just reason to delay entry of a final judgment. Accordingly, pursuant to USCIT R. 54(b) and as reflected in the attached judgment order, the Court hereby directs a final judgment be entered in favor on the United States on its complaint in CIT No. 96-10-02466.

Index

Customs Bulletin and Decisions
Vol. 35, No. 15, April 11, 2001

U.S. Customs Service

Treasury Decisions

Federal Recycling Program
Printed on Recycled Paper
U.S.G.P.O. 2000-472-776-20026

General Notices

Federal Recycling Program
Printed on Recycled Paper
U.S.G.P.O. 2000-472-776-20026

CUSTOMS RULINGS LETTERS AND TREATMENT

U.S. Court of International Trade

Slip Opinions

Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 2000-472-776-20026